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# SHAE SORTWELL

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STATE REPRESENTATIVE • 2<sup>nd</sup> ASSEMBLY DISTRICT

**Hearing Testimony**  
**Assembly Committee on Environment**  
**October 31, 2019**  
**Assembly Bill 347**

Thank you Chairman Kitchens and members of the Assembly Committee on Environment.

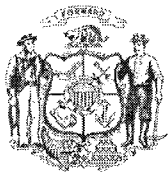
I first heard about the matter before us today when I was campaigning for this job in the Assembly. As I was knocking on doors in Two Rivers, I came across City Manager Greg Buckley, and he relayed the concerns you will hear about today.

AB 347 seeks to fix an issue that lakefront municipalities encounter when they need to dredge harbors and rivers. Currently, sediment and sand are, for the most part, considered "solid waste." This makes the removal and relocation process for dredging very costly to small municipalities.

Sediment and sand accumulation is a naturally occurring process in our rivers and harbors. To keep the harbors safe for economic activity and recreational boating, they need to be dredged. Sand and sediment should not be considered in the same class of pollutants as refuse or sludge from waste treatment plants.

AB 347 removes sand and sediment from the statutory definition of "solid waste." Further, the bill requires a sediment sample analysis to ensure pollutants and contamination are kept in check.

I ask that the committee support AB 347 and make this common-sense change to our statute.



**ANDRÉ JACQUE**

STATE SENATOR • 1<sup>ST</sup> SENATE DISTRICT

Phone: (608) 266-3512

Fax: (608) 282-3541

Sen.Jacque@legis.wi.gov

State Capitol - P.O. Box 7882

Madison, WI 53707-7882

*Testimony before the Assembly Committee on Environment  
State Senator André Jacque  
October 31, 2019*

Chairman Kitchens and Committee Members,

Thank you for holding this hearing on Assembly Bill 347, relating to sand removed from Lake Michigan or Lake Superior.

Currently, the Department of Natural Resources administers rules relating to the management and disposal of solid waste. Solid waste includes garbage, sludge from treatment plants, pollution control facilities, and other discarded or salvageable materials, with exceptions for materials from domestic sewage, irrigation return flows, or industrial discharges.

Assembly Bill 347 changes the definition of solid waste to ensure that dredged naturally deposited sand can be more easily re-used if a sediment sample analysis indicates an average level of contamination below background or below the level of contamination present at the proposed deposit area. This is a common sense adjustment that ensures environmental protections remain in place while saving money for municipalities that otherwise face substantial costs to dispose of a still valuable and reusable material, allowing coastal communities to reclaim beach areas.

One of the stated intents of existing state statutes and administrative codes is to promote re-use of materials. Essentially, Assembly Bill 347 would allow for re-use of what amounts to clean beach sand and eliminates the need to truck the material inland to an expensive containment facility. Any containment facility used under current law is presently considered a landfill by the DNR, thus imposing another set of regulations, offering one more reason that reform is needed.

Thank you for your consideration of Assembly Bill 347.



## Assembly Committee on Environment

### *2019 Assembly Bill 347*

### *Sand removed from the bed of Lake Michigan or Lake Superior*

*October 31, 2019*

Good morning Chair Kitchens and members of the Committee. My name is Kate Strom Hiorns and I am the Recycling and Solid Waste Section Chief with the Wisconsin Department of Natural Resources' Waste and Materials Management program. Thank you for the opportunity to provide testimony for informational purposes on Assembly Bill 347 (AB 347).

The language of the bill directly affects the definition of solid waste under s. 289.01(33), Stats., by excluding, "sand deposited on the bed of Lake Michigan or Lake Superior by currents, storms, or other natural activity that is removed and for which a sediment sample analysis indicates an average level of contamination below background or below the level of contamination present at the proposed deposit area." The department believes there are potential adverse impacts to making these materials exempt from the definition of solid waste.

If the intent of AB 347 is to utilize uncontaminated sand from the bed of the lakes on coastal beaches and areas, the department believes clarity would be needed in order to provide certainty to the regulated community.

- As not all lake deposits are sand, defining the term "sand" would provide clarity as to which sediments this exemption would apply. Most sediment contains a mixture of sand and silt or maybe even some clays. It is typically the fine-grained soils, such as the silts and clays that will hold on to contaminants, not the sand. Therefore, the ratios of sand to silt will affect the contaminant concentrations. If the dredged sediment is a mixture, the status of the sediment as a solid waste under the terms of the bill may be unclear.
- The bill does not specify the type of sediment sample analysis that should be conducted and on what substances. Would the DNR have authority under the bill to direct the type of analysis that is needed to demonstrate this contaminant content and physical properties? Currently, Wisconsin Administrative Code Chapter NR 347 provides for sediment sampling and analysis, monitoring protocol and disposal criteria for dredging projects. NR 347.01(2) explicitly states, "It is department policy to encourage reuse of dredged material and to minimize environmental harm resulting from a dredging project." NR 347.02 applicability indicates that the chapter, "applies to removal and disposal of material from the beds of waterways except where exempted by statute" and includes provisions for upland placement of material for beach nourishment. If this bill is

interpreted to bypass the provisions of NR 347, important considerations for the public interest may be omitted.

As written, the language would appear to explicitly allow moving any level of contaminated sediment from one location to another if concentrations are less than the placement area. Excluding the Lake Michigan and Lake Superior material from the definition of solid waste would not exclude that material from regulations that prevent the discharge of hazardous substances that adversely impact, or threaten to adversely impact, human health, welfare or the environment (ch. 292, Stats.). For example, the dewatering and placement of the dredged sediment may still cause an impact to surface water or groundwater and would trigger the need for a response action to address the impacts under Wis. Admin. Code NR 700. In addition, management of contaminated soil (and sediment per proposed rule changes) at response action sites would be regulated under NR 718.

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

The existing definitions and authorities provide for beneficial use of material or upland placement that does not increase the human health risk of materials with relatively low levels of contaminants such as PCBs and poly-aromatic hydrocarbons (PAHs). One example would be the recent permits for Kenosha Harbor dredging and breakwall maintenance along the Kenosha shoreline. Kenosha harbor was dredged last summer for navigation needs, and the sand was placed in the shoreline waters south of the harbor to nourish neighboring beaches. This sand contained detectable levels of PCB's that were equivalent to or lower in concentration than the sediment at the placement sites and concentrations were below levels that would pose an ecological risk.

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

On behalf of the Department of Natural Resources Waste and Materials Management Program, I would like to thank you for your time today. I would be happy to answer any questions you may have.



October 31, 2019

#### Testimony on Assembly Bill 347

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

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

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

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

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

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

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

[wlgreenfire.org](http://wlgreenfire.org)

PO Box 1206, Rhinelander, Wisconsin 54501 | [Info@wlgreenfire.org](mailto:Info@wlgreenfire.org) | 715.203.0384



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

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

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

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

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

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

John Robinson  
[robinson.john@hotmail.com](mailto:robinson.john@hotmail.com)  
715 212-2227 (c)



Aerial View of the Harbor on Lake Michigan at Two Rivers

## **Testimony in Support of AB 347**

**Relating to the Disposal of Sand Removed from the  
Bottom of Lake Michigan or Lake Superior  
Assembly Committee on Environment  
October 31, 2019**



**Gregory E. Buckley**  
**City Manager**  
**City of Two Rivers**  
**1717 East Park Street**  
**Two Rivers, WI 54241**  
**[gbuckley@two-rivers.org](mailto:gbuckley@two-rivers.org)**

The City of Two Rivers urges support for this legislation, which would make clear that clean sand “removed from” (or “rearranged on the bottom of”) Lake Michigan or Lake Superior is NOT to be defined nor handled as solid waste.

Two Rivers is a small Lake Michigan coastal city of 11,700 that has seen the loss of much of its traditional manufacturing base over the past quarter century.

But we are bouncing back, and we view our central harbor area, where the East and West Twin Rivers come flowing together before joining the waters of Lake Michigan, as key to that future. We have a great city beach that draws hundreds of thousands of visitors each year, just north of the harbor; we’re a great sport fishing port; and we still have commercial fishermen who go out nearly every day in their stout wooden fishing tugs, to harvest whitefish on the big lake.

Redevelopment of the city’s waterfront is a top priority, and we are making progress. With some funding help from the WEDC, local investors just last month broke ground on a new, \$6.3 million downtown waterfront hotel.

... We’re “Turning Our Face Back to the Water”... the water that was the reason our community came to be. The water that is so important to our future.

Safe and reliable access through the harbor channel to and from Lake Michigan is fundamental to realizing the full benefits of that waterfront.

Chairman Kitchens, I am not telling you anything, as you hail from the great coastal city of Sturgeon Bay and also represent Kewaunee and Algoma—small port cities that, like Two Rivers, struggle to keep their harbor channels at an acceptable depth and not filled with dangerous shoals that result from wave action on the big lake piling up sand from the shallow, sandy, near-shore lakebed in our harbor channels.

We have traditionally relied on the Federal government—the U.S. Army Corps of Engineers (USACE)—to do the maintenance dredging that keeps those channels sufficiently deep, safe and usable. But that funding has been less certain in recent years, and on occasion we have had to rely on State and local funds to do maintenance dredging.

When it does harbor dredging at Two Rivers, the Corps has almost always done hydraulic dredging—the barge-mounted dredging equipment acts like a giant vacuum cleaner, sucking a sand/water mixture from the surface of the lakebed, pumping that slurry through a pipe to a near-shore location just south of our beach, where it is deposited in the near-shore waters for “beach nourishment.”

In 2015, when shoals were again clogging our harbor entrance, creating a navigation hazard, there was no USACE funding available. Our City was pleased to be able to secure 80 percent funding through WisDOT’s Harbor Assistance Program (HAP) to remove just over 22,000 cubic yards of sand from the channel bottom and harbor entrance.

It was then that we became aware that the City, unlike the USACE, had to secure a DNR permit for the dredging. We also learned that the City, unlike the USACE, would not be allowed to do hydraulic dredging to simply move the clean lake bottom sand from one area of the bed of Lake Michigan to another.



No, due to the State's interpretation of the statutory definition of "solid waste" as including materials removed from the bottom of our Great Lakes, the City was required to construct an upland disposal site for the placement of the materials being removed from our harbor channel and outer harbor. Materials that we all know as "beach sand," which we would have much rather pumped onto the area near our beach--at much less cost--instead had to get trucked five miles away to a constructed disposal site designed like a landfill.

This experience caused our city leaders to speak with our State Senator, Andre Jacque, and our State Representative, Shae Sortwell. That resulted in this bill, AB 347, being authored and progressing to this hearing today.

In short, our reasons for supporting the bill are:

1. **Economy.** It is substantially less expensive to "move" clean sand from one area of the lakebed to another, nearby area than to load it onto barges, tow them into harbor, offload the material into dump trucks and haul it to an approved disposal site. The USACE is currently estimating a unit cost of \$15/CY to dispose of material by mechanical dredging and transport, versus hydraulic dredging.
2. **Sustainability of Our Harbors.** If local communities, maybe with help from the State of Wisconsin, are going to have to take on more harbor maintenance dredging in the future, we need to be able to afford it. State and local resources are being wasted under current regulatory requirements.
3. **Preservation of Natural Resources.** The sand that lies offshore and onshore along our beaches in coastal towns like Two Rivers, Kewaunee, Algoma and others, is a natural resource. Today, with record high Lake Michigan water levels, we would like to have more of that sand on our beaches. Further, loading thousands of cubic yards of sand into big dump trucks to haul it miles to a disposal site is a big waste of fossil fuels, and adds to air pollution.

Make no mistake about it—as people who are lucky enough to live on Lake Michigan, to fish and swim in its waters, to drink of its waters—we take a back seat to no one in wanting to protect this precious natural resource. If sediments to be removed by dredging are not as clean or cleaner than background levels in our area of the big lake, then they should be hauled away and placed elsewhere.

But to be required, in the course of maintaining our connecting channels to that big lake, to pick up clean bottom sand, load it onto barges, transfer it to trucks, and haul it to an approved upland disposal site—at double the cost of just moving it few hundred yards on the lakebed—is crazy. It does the lake no good, it wastes a natural resource, and it causes us to squander limited public funds that could be better used elsewhere.

We urge your support for this reasonable, common sense, change in State Law.

Thank you.



**September 2009**

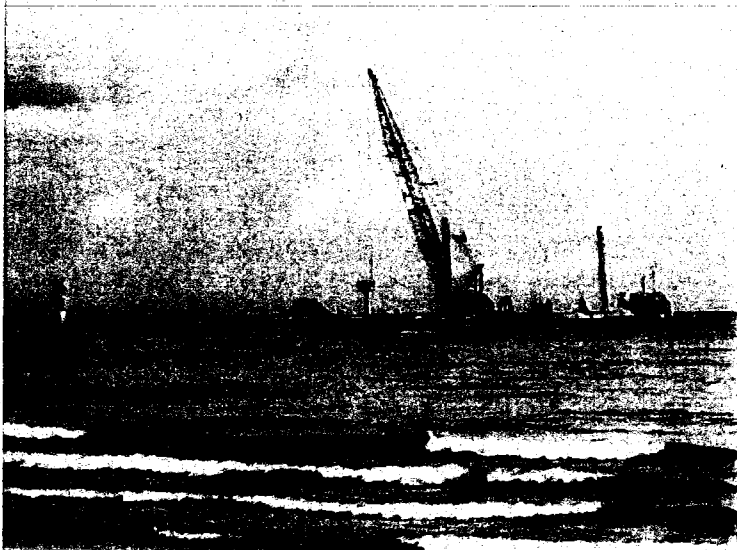
Hydraulic Dredging contracted by U.S. Army Corps of Engineers, Barge in Lake Michigan off the mouth of Two Rivers harbor, doing hydraulic dredging and pumping a slurry of water and clean lake bottom sand onto an area just offshore of the beach north of the harbor channel and south of the City's popular Neshotah Beach



Pipe discharging sand and water slurry into the near-shore area of Lake Michigan—a use allowed under terms of a submerged lands lease with the State of Wisconsin



Disposal area after completion of dredging; "Beach Nourishment," as the USACE calls it

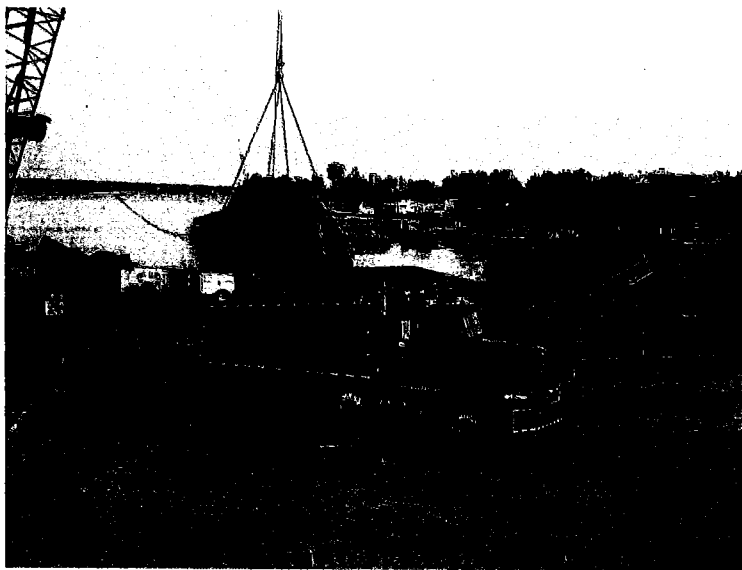


### September 2016

Mechanical Dredging, contracted by the City of Two Rivers, funded with WisDOT Harbor Assistance Program grant funds and 20 percent City match. Crane barge and transport barge at the harbor mouth



Transport barge filled with clean lake bottom sand, ready to head into harbor for sand to be unloaded and then loaded into dump trucks for transport to an approved upland disposal site, 5 miles away



Sand being loaded into one of a fleet of dump trucks, for transport to disposal area

Project contract was to dredge 22,500 CY of material, at a total cost of \$664,000. Of that amount, over \$300,000 was related to loading and trucking the dredged material and to disposal site-related costs

**Bid Tabulation**  
**Outer Harbor Dredge Project**  
**City of Two Rivers**  
**Project 14T141**

Date: April 13, 2016

Base Bid Items		Units	No. of Units	Bids Opened			
				ROEN SALVAGE CO.		MICHELS CORP.	
				Unit Bid Price	Extension	Unit Bid Price	Extension
1	Mobilization and Demobilization	Lump Sum	1	\$81,725.00	\$81,725.00	\$95,000.00	\$95,000.00
2	Off Load Site Initial Preparation	Lump Sum	1	\$6,000.00	\$6,000.00	\$11,000.00	\$11,000.00
3	Sediment Dredging and Transport to Off Load Site	Cubic Yard	22,500	\$11.75	\$264,375.00	\$14.25	\$320,625.00
4	Loading, Hauling and Placement of Dredged Material	Cubic Yard	22,500	\$9.00	\$202,500.00	\$11.00	\$247,500.00
5	Disposal Site – Initial Preparation	Lump Sum	1	\$30,000.00	\$30,000.00	\$61,000.00	\$61,000.00
6	Disposal Site – Topsoil Placement	Lump Sum	1	\$10,500.00	\$10,500.00	\$10,750.00	\$10,750.00
7	Disposal Site Initial Grading	Cubic Yard	20,000	\$1.85	\$37,000.00	\$2.95	\$59,000.00
8	Disposal Site – Seed, Fertilize and Mulch	Acre	4	\$3,700.00	\$14,800.00	\$2,000.00	\$8,000.00
9	Restoration	Lump Sum	1	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
10	Load, Haul and Dispose of Foreign Debris	Ton	100	\$10.00	\$1,000.00	\$1.00	\$100.00
11	Load, Haul and Dispose of Concrete Debris	Cubic Yard	100	\$10.00	\$1,000.00	\$1.00	\$100.00
12	Road Repair Allowance	Lump Sum	1	\$10,000.00	\$10,000.00	\$10,000.00	\$10,000.00
				<b>TOTAL=</b>	<b>\$663,900.00</b>	<b>TOTAL=</b>	<b>\$828,075.00</b>
				Is Bidder pre-qualified?	yes		yes
				Bid signed?	yes		yes
				Bid Bond included?	yes		yes
				Equipment and Labor Rates included?	yes		yes
				Dredging, Conveyance & Disposal Plan included?	yes		yes



City of Kewaunee  
401 Fifth Street  
Kewaunee, WI 54216  
T: 920-388-5000  
F: 920-388-5025

October 31, 2019

Wisconsin State Representative Shae A. Sortwell  
Room 420 North  
State Capitol  
PO Box 8953  
Madison, WI 53708

Dear Representative Sortwell:

As Administrator of the City of Kewaunee and a former Wisconsin representative to The Great Lakes Commission, I want you to add my support to 2019 Assembly Bill 347. The bill provides a reasonable and pragmatic definition to the term "Sold Waste". The Bill, if it becomes law, could save municipalities scarce tax dollars while simultaneously providing for environmental protections. Dredgings, which are tested and proven to be at or below an allowable level of contamination, ought not be required to be landfilled. This seems to me to be a reasonable and cost effective law that will help Wisconsin municipalities save scarce dollars while simultaneously ensuring environmental protection.

Sincerely,

Fred P. Schnook  
Kewaunee City Administrator