

Dredged Material Disposal Approvals Public Meeting Requirement – Ch. 289.54, Stats.



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Description: A new statute (S. 289.54, Stats.) requires the department to hold public meetings before issuing approvals or grants of exemption for disposal or reuse of dredged material. Staff responsible for reviewing proposals for disposal or beneficial reuse of dredged material will have to schedule and conduct a public meeting before issuing an approval or low hazard waste grant of exemption and make reference to certain facts about the meeting in the approval or grant of exemption. This guidance document provides the text of the statute and information about how to comply with it.

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This is to make you aware of the requirements of new statutory language for disposal of dredged material, which was part of the 1999 Wisconsin Act 9. It applies to all dredged material disposal projects that the Waste and Materials Management Program has to deal with. The text of the new language is:

289.54 Disposal of certain dredged materials. (1) In this section, “PCBs” has the meaning given in s. 299.45(1)(1).

(2) The department may not approve a request by the operator of a solid waste disposal facility to accept dredged materials that contain PCBs or heavy metals in a concentration of less than 50 parts per million for disposal in the solid waste disposal facility until after the department holds a public meeting in the city, village or town in which the solid waste disposal facility is located. At the public meeting, the department shall describe the nature of the requested disposal and shall solicit public comment.

This statute applies now and is not dependent on writing new rules or guidance. It applies only to dredged material, not other wastes. The statute became effective with the signing of the budget bill in November 1999.

It applies to all proposals where someone is proposing to dispose of dredged material in a landfill, whether licensed or approved or not, dispose in accordance with a landspreading plan of operation, or dispose of or beneficially reuse dredged material subject to a grant of exemption under the low hazard exemption of s. 289.43(8), Stats.

The reason it applies to all proposals is that, in practice, it won't matter what the detectable PCB concentrations are. Any soil or sediment will have some metallic elements in it. The less than 50 ppm concentration applies to “heavy metals”, which is not defined in the Statute. According to a chemistry text that I consulted, the “heavy metals” are also called “transition metals”, consisting of metals and post-transition metals in Groups 3, 4, and 5 of the Periodic Table, or elements 21 to 31 (including Ti, Cr, Mn, Fe, Co, Ni, Cu, and Zn), 39 to 50 (which includes Mo, Ag, Cd, and Sn), and 57 to 83 (which includes Hg and Pb). All natural or contaminated sediments will contain several “heavy metals” at concentrations less than 50 ppm. The cleaner the sediment, the more assured that the sediment will have some “heavy metals” less than 50 ppm.

The department has to hold a public meeting under this statute whether there is any public interest or not. The meeting has to be publicly noticed, but the public notice doesn't need to be worded to solicit comments or a request for a meeting, unlike what would normally be done with notices for EAs and completeness packages. Since a meeting is a foregone conclusion, the notice should state where and when the public meeting will be held.

The requirement is for a public meeting, not a public hearing. Meetings do not include sworn testimony of witnesses, transcripts of recorded testimony, a hearing examiner, etc., such as we have come to know and appreciate for feasibility contested case hearings. However, they are still formal and require staff preparation and time. From our past practice, this includes reserving a location and room in the municipality where the disposal or reuse project is located, setting a date and time, scheduling a 15 to 30 day lead time, issuing an official notice or a press release to the local papers, choosing a moderator, making some presentations by Department staff (although the applicant ought to be asked to contribute), assigning someone to take notes, and preparing some record or comment summary, to show that we did our job.

The comment summary and the date, location, and topic of the public meeting should be cited as findings of fact in any approval or grant of exemption. If you don't cite the fact that a meeting was scheduled and held in the municipality where the disposal site is located, it makes it difficult to demonstrate that we complied with the statutes if the approval or grant of exemption is challenged.

Where a project includes an EA, it might be possible to announce the meeting details at the same time as the EA is put out for public comment. Work with the dredging project coordinator (usually the dredging permit reviewer) on a joint announcement of the EA and public meeting.

This statute applies to the operators of solid waste disposal facilities (including landspreading facilities and low hazard exempt facilities), not dredging applicants. Dredging permit reviewers in the water program will not have to deal with this statute, as long as there is no need for a disposal site approval that has to be reviewed by the Waste and Materials Management Program. Any project which meets the exemption categories of NR 500.08(3), Wis. Adm. Code, would not be required by this new statute to hold a public meeting, as no solid waste approval or grant of exemption is issued. There are several hundred dredging permits issued every year, most of which deal with disposal as part of the dredging permit and do not require an approval from the Waste and Materials Management Program.

Most of the larger corporately owned landfills have proposed and received department approval for special waste acceptance plans. These are essentially plan modifications which allow the landfill to accept wastes that meet specific lists or properties and dispose of them using predefined placement and covering requirements. Most do not have any specific reference to dredged material. If a landfill operator were to request adding dredged material to the special waste acceptance plan, we are required to hold a public meeting prior to issuing the approval of the plan modification, but no separate public meeting would be required for each acceptance of dredged material under the plan, as long as the waste characteristics and disposal practices conformed to the plan.

Contact 608/266-2111 or DNRWasteMaterials@Wisconsin.gov for further information.

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