

State of Wisconsin
DEPARTMENT OF NATURAL RESOURCES
2984 Shawano Ave.
Green Bay, WI, 54313

Tony Evers, Governor
Adam N. Payne, Secretary
Telephone 608-266-2621
Toll Free 1-888-936-7463
TTY Access via relay - 711



February 2, 2024

IP-NE-2023-5-02988

Brown County Port & Resource Recovery
Attn: Mark Walter
2561 S Broadway
Green Bay, WI 54304
[sent electronically]

RE: Water Quality Certification for discharges within an established bulkhead area on the west bank of the Fox River in the City of Green Bay, Brown County

Dear Mr. Walter:

The Department of Natural Resources has completed its review of your application for state *Water Quality Certification* (WQC) to discharge materials to a water of the state, the Fox River, in the City of Green Bay, Brown County. Enclosed is a State WQC which certifies the discharges from the proposed activities will comply with water quality requirements and lists the conditions which must be followed. Please read your certification carefully so that you are fully aware of what is expected of you.

As a condition of the State's Water Quality Certification, state law requires that you:

1. Publish the attached as a Class 1 Notice, at your expense, in the **Green Bay Press Gazette**, 435 E. Walnut St, PO Box 23430, Green Bay WI 54305-3430, Email: legals@greenbaypressgazette.com, Phone (877) 943-0446, Fax (877) 943-0443.
2. Please obtain and send to me, the affidavit from the newspaper providing proof that the notice has been published.

Please note, this **Water Quality Certification decision becomes final 30 days after the date of publication**, unless an objection is filed, and a hearing is requested. We will contact you only if a hearing is requested.

If you have any questions about your certification, please call me at (920) 410-3181 or email me at Crystal.VonHoldt@wisconsin.gov.

Sincerely,

Crystal Von Holdt
Water Management Specialist

Email CC:

Ryan Huber, U.S. ACOE
Jon LeRoy, City of Green Bay Zoning Adm.
Gaven Brault, DNR Conservation Warden
Kate Angel, WI Coastal Management Program
Connie Antonuk, DNR Field Integration Leader

Kyle Bretl, GEI
Jim Killian, DNR Water Resources
Tauren Beggs, DNR R&R Program
Sarah Anderson, DNR Stormwater Specialist

Notice of Water Quality Certification (Docket #IP-NE-2023-5-02988)

Mark Walter, on behalf of Brown County Port & Resource Recovery, has filed an application with the Wisconsin Department of Natural Resources for water quality certification under Section 401 of the Federal Clean Water Act, Section 281.15, 283, 401 CWA, Wisconsin Statutes.

The project is located in the SW of the NW of Section 19, Township 24 North, Range 21 E, in the City of Green Bay, Brown County. The project consists of filling between the existing edge of water (the natural shoreline) and the established surveyed bulkhead line where coastal revetment will be constructed on the lakeshore (north property boundary) and a dock wall (seawall) constructed on the riverbank (east property boundary). Both shoreline structures (revetment and dock wall) will be entirely within the bulkhead line. The newly filled riverbed and lakebed area will be raised and graded to match the proposed raised site elevation across the project area. All work for filling and grading will be conducted within contained construction site by means of turbidity barriers or sheet piling structures to contain the construction impacts. The overall project is for redevelopment and improvement of the site to be used for Port operations. This redevelopment project will result in discharges to a water of the state, the Fox River. There is an existing and established bulkhead line along the Fox River at the project location.

The Department has evaluated this proposal and determined that this activity will meet the standards found in Section NR 299.04, Wis. Admin. Code, and certification is granted.

If you would like to know more about this project, contact Crystal Von Holdt, in writing at 2984 Shawano Ave., Green Bay WI 54313, by email at Crystal.vonHoldt@wisconsin.gov, or by phone at (920) 410-3181. Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.

The following conditions are part of the certification:

1. You must notify Crystal vonHoldt at phone (920) 410-3181 or email Crystal.VonHoldt@wisconsin.gov before starting construction and again not more than 5 days after the project is complete.
2. The applicant shall allow the Wisconsin Department of Natural Resources reasonable entry and access to the discharge site to inspect the discharge for compliance with the certification and applicable laws.
3. Authorization hereby granted by the Department is not transferable.
4. **This approval is valid for 3 years from the date the Water Quality Certification authorization becomes final.** If you will not complete the project by this date, you must submit a written request for an extension prior to expiration of the initial time limit specified in the certification. Your request must identify the requested extension date. The Department shall extend the time limit for no longer than an additional 3 years if you request the extension before the initial time limit expires. You may not begin or continue construction after the original certification expiration date unless the Department extends the certification in writing or grants a new certification.
5. This certification does not authorize any work other than what you **specifically describe in your application and plans, and as modified by the conditions** of this certification. If you wish to alter the project or certification conditions, you must first obtain written approval of the Department.
6. Before you start your project, **you must first obtain any permit or approval that may be required for your project** by local zoning ordinances and by the U.S. Army Corps of Engineers. You are responsible for contacting these local and federal authorities to determine if they require permits or approvals for your

project. These local and federal authorities are responsible for determining if your project complies with their requirements.

7. An after-construction survey of the edge of fill and a survey of the historically established bulkhead line are to be completed and submitted to the Department to document all fill has remained within the established bulkhead and does not extend outside of this bulkhead boundary.
8. All company(s) performing the proposed work must include design provisions requiring that spudding, barging, prop-wash, and dredging activities must stay at least 25-feet from all established engineered caps. This 25-feet is a requirement unless the company(s) can document that they have the capabilities for position control of plus or minus less feet instead. Regardless of which offset the companies propose, the companies must describe the location control and monitoring QA and QC capabilities in detail. This information is to be submitted to DNR's Water Resources Management Specialist, Jim Killian, as your main contact regarding the responsibility to monitor and maintain the established engineered caps at this location. Jim can be reached at James.Killian@wisconsin.gov or by phone at 608-445-4724.
9. The Department may modify or revoke this certification for good cause, including if the project is not completed according to the terms of the certification or if the Department determines the activity is detrimental to the public interest.
10. **You must post a copy of this certification at a conspicuous location on the project site**, visible from the waterway, for at least five days prior to construction, and remaining at least five days after construction. You must also have a copy of the certification and approved plan available at the project site at all times until the project is complete.
11. Your acceptance of this certification and efforts to begin work on this project signify that you have **read, understood, and agreed** to follow all conditions of this certification.
12. **You must submit a series of photographs to the Department, within one week of completing work on the site.** The photographs must be taken from different vantage points and depict all work authorized by this certification.
13. You, your agent, and any involved contractors or consultants may be considered a party to the violation pursuant to Section 30.292, Wis. Stats., for any violations of Ch 30, Wis. Stats., or this certification.
14. Construction shall be accomplished in such a manner as to minimize erosion and siltation into surface waters. Erosion control measures (such as silt fence and straw bales) must meet or exceed the technical standards of ch. NR 151, Wis. Adm. Code. The technical standards are found at: http://dnr.wi.gov/topic/stormwater/standards/const_standards.html.
15. All equipment used for the project including but not limited to tracked vehicles, barges, boats, hoses, sheet pile, and pumps shall be de-contaminated for invasive and exotic viruses and species prior to use and after use. The following steps must be taken every time you move your equipment to avoid transporting invasive and exotic viruses and species. To the extent practicable, equipment and gear used on infested waters shall not be used on other non-infested waters.
 - a. Inspect and remove aquatic plants, animals, and mud from your equipment.
 - b. Drain all water from your equipment that comes in contact with infested waters, including but not limited to tracked vehicles, barges, boats, hoses, sheet pile, and pumps.
 - c. Dispose of aquatic plants, animals in the trash. Never release or transfer aquatic plants, animals, or water from one waterbody to another.

- d. Wash your equipment with hot (>140° F) and/or high-pressure water, - **OR** - Allow your equipment to dry thoroughly for 5 days.
16. To minimize adverse impacts on sensitive fish movement, fish spawning, and egg incubation periods, in-water disturbances are not to be conducted annually between March 1st or ice-out (whichever is earliest) and June 15th to protect various spring spawning species. Additionally, in-water disturbances are not to be conducted annually between October 15th and November 30th to protect fall spawning migration of lake whitefish in the Fox River. During this period, the placement of material may not occur unless a waiver has been obtained from the DNR.
17. A plan will need to be submitted to the DNR's Remediation and Redevelopment (R&R) Program (Attn: Tauren Beggs) and approval obtained **prior to work** starting for contaminated dredge materials management and disturbance of engineered caps associated with the Fox River NRDA/PCB Releases OU2-5 (ALT SF) case, BRRTS # 02-45-582407. Additional information and clarification (including engineering design) will need to be provided as part of that plan to ensure that the proposed disturbance of and/or filling on top of the engineered caps and the management of contaminated dredge materials will be protective of public health and the environment.
 - a. Tauren Beggs can be reached at Tauren.Beggs@wisconsin.gov or by phone at 920-510-3472.
18. Appropriate erosion and water quality control measures for in-water work must be in place and effective during the project and at the end of each workday.
19. You must supply a copy of this permit to every contractor associated with this project.

FINDINGS OF FACT

1. Mark Walter on behalf of Brown County Port & Resource Recovery has filed an application for a certification to discharge materials to a water of the state, the Fox River, in the City of Green Bay, Brown County, also described as being in the SW of the NW of Section 19, Township 24 North, Range 21 East.
2. The proposed project includes dredging along the proposed dock wall to a depth that will allow vessels to access and dock along the site from the navigational channel with a proposal to remove 184,500 cubic yards of material. Some of the material will be transported to Bayport CDF and appropriate materials staying on site for reuse. The project proposes the construction of a stormwater management pond within 500ft of the riverbank. Additionally, the project is applying for state Water Quality Certification (WQC) for authorization of in-water impacts proposed within the established bulkhead line. The WQC will review for impacts from the proposed new dock wall construction along the riverbank and the placement of riprap along the shoreline on the lake. The overall project is for redevelopment and improvement of the site to be used for Port operations.
3. The Department has reviewed the proposed activity and certifies that the discharge from the proposed project will comply with water quality requirements.
4. The Department has completed an investigation of the project site and has evaluated the project as described in the application and plans.
5. The Fox River is a navigable water with an established bulkhead at the project site along the west bank of the Fox River and shoreline of the Lower Bay.

6. The proposed project, if constructed in accordance with this certification will not adversely affect water quality, will not increase water pollution in surface waters and will not cause environmental pollution as defined in s. 283.01(6m), Wis. Stats.
7. The proposed project will not impact wetlands if constructed in accordance with this certification.
8. The Department of Natural Resources has determined that the agency's review of the proposed project constitutes an equivalent analysis action under s. NR 150.20(2), Wis. Adm. Code. The Department has considered the impacts on the human environment, alternatives to the proposed projects and has provided opportunities for public disclosure and comment. The Department has completed all procedural requirements of s. 1.11(2)(c), Wis. Stats., and NR 150, Wis. Adm. Code for this project.

CONCLUSIONS OF LAW

1. The Department has authority under the above indicated Statutes and Administrative Codes, to issue a permit for the construction and maintenance of this project.
2. The Department has complied with s. 1.11, Wis. Stats.

NOTICE OF APPEAL RIGHTS

If you believe that you have a right to challenge this decision, you should know that the Wisconsin statutes and administrative rules establish time periods within which requests to review Department decisions shall be filed. For judicial review of a decision pursuant to sections 227.52 and 227.53, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to file your petition with the appropriate circuit court and serve the petition on the Department. Such a petition for judicial review shall name the Department of Natural Resources as the respondent.

To request a contested case hearing of any individual permit decision pursuant to section 30.209, Wis. Stats., you have 30 days after the decision is mailed, or otherwise served by the Department, to serve a petition for hearing on the Secretary of the Department of Natural Resources, P.O. Box 7921, Madison, WI, 53707-7921. The petition shall be in writing, shall be dated and signed by the petitioner, and shall include as an attachment a copy of the decision for which administrative review is sought. If you are not the applicant, you must simultaneously provide a copy of the petition to the applicant. If you wish to request a stay of the project, you must provide information, as outlined below, to show that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment. If you are not the permit applicant, you must provide a copy of the petition to the permit applicant at the same time that you serve the petition on the Department.

The filing of a request for a contested case hearing is not a prerequisite for judicial review and does not extend the 30-day period for filing a petition for judicial review.

A request for contested case hearing must meet the requirements of section 30.209, Wis. Stats., and sections NR 2.03, 2.05, and 310.18, Wis. Admin. Codes, and if the petitioner is not the applicant the petition must include the following information:

1. A description of the objection that is sufficiently specific to allow the department to determine which provisions of this section may be violated if the proposed permit or contract is allowed to proceed.
2. A description of the facts supporting the petition that is sufficiently specific to determine how the petitioner believes the project, as proposed, may result in a violation of Chapter 30, Wis. Stats.

3. A commitment by the petitioner to appear at the administrative hearing and present information supporting the petitioner's objection.

If the petition contains a request for a stay of the project, the petition must also include information showing that a stay is necessary to prevent significant adverse impacts or irreversible harm to the environment.

This determination becomes final in accordance with the provisions of s. NR 299.05(7), Wis. Admin. Code, and is judicially reviewable when final. For judicial review of a decision pursuant to ss. 227.52 and 227.53, Wis. Stats., you have 30 days after the decision becomes final to file your petition with the appropriate circuit court and to serve the petition on the Secretary of the Department of Natural Resources. The petition must name the Department of Natural Resources as the respondent.

Reasonable accommodation, including the provision of informational material in an alternative format, will be provided for qualified individuals with disabilities upon request.

Dated at Green Bay, Wisconsin, on February 2, 2024.

WISCONSIN DEPARTMENT OF NATURAL RESOURCES

For the Secretary

A handwritten signature in cursive script that reads "Crystal Von Holdt".

Crystal Von Holdt

WI Department of Natural Resources