

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

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February 2, 2024

IP-NE-2023-5-02987

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

RE: Permit for stream dredging 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 a permit to dredge materials from the Fox River located in the SW 1/4, NW 1/4, Section 19, Township 24, Range 21E, in the City of Green Bay, Brown County. You will be pleased to know your application is approved.

I am attaching a copy of your permit, which lists the many important conditions that must be followed to protect water quality and habitat. A copy of the permit must be posted for reference at the project site. **Please read your permit conditions carefully so that you are fully aware of what is expected of you.** Please note one of the conditions requires that you submit photographs of the completed project within 7 days after you've finished construction. This helps both of us to document the completion of the project and compliance with the permit conditions.

Your next step will be to notify me of the date on which you plan to start construction and again your project is complete. If you have any questions about your permit, please call me at (920) 410-3181 or you can reach me by email 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

**STATE OF WISCONSIN
DEPARTMENT OF NATURAL RESOURCES**

**STREAM DREDGING PERMIT
IP-NE-2023-5-02987**

Application of Mark Walter on behalf of Brown County Port & Resource Recovery, is hereby granted under Section 30.20(2), Wisconsin Statutes, a permit to dredge materials from the Fox River located in the SW 1/4, NW 1/4, Section 19, Township 24, Range 21E, in the City of Green Bay, Brown County, subject to the following conditions:

PERMIT

1. You must notify Crystal Von Holdt by phone at (920) 410-3181 or by email at Crystal.VonHoldt@wisconsin.gov before starting construction and again not more than 5 days after the project is complete.
2. You must complete the project as described **on or before February 2, 2029**. 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 permit. Your request must identify the requested extension date. The Department shall extend the time limit for an individual permit or contract for no longer than an additional 5 years if you request the extension before the initial time limit expires. You may not begin or continue construction after the original permit expiration date unless the Department extends the permit in writing or grants a new permit.
3. This permit does not authorize any work other than what you specifically describe in your application and plans, and as modified by the conditions of this permit. If you wish to alter the project or permit conditions, you must first obtain written approval of the Department.
4. Before you start your project, you must first obtain all other permits or approvals that may be required for your project by local zoning ordinances and/or 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.
5. Upon reasonable notice, you shall allow access to your project site during reasonable hours to any Department employee who is investigating the project's construction, operation, maintenance, or permit compliance.
6. The Department may modify or revoke this permit for good cause, including if the project is not completed according to the terms of the permit or if the Department determines the activity is detrimental to the public interest.
7. **You must post a copy of this permit 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 permit and approved plan available at the project site at all times until the project is complete.
8. Your acceptance of this permit and efforts to begin work on this project signify that you have **read, understood, and agreed** to follow all conditions of this permit.
9. 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 permit.

10. 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 Chapter 30, Wis. Stats., or this permit.
11. Construction above and below the ordinary high-water mark (OHWM) 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.
12. 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**.

SPECIFIC DREDGING CONDITIONS

13. 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 removal of material may not occur unless a waiver has been obtained from the DNR.
14. Land disturbances exceeding 1 acre in size must obtain *Wisconsin Pollution Discharge Elimination System* (WPDES) coverage through the DNR's Stormwater Management Program. A Notice of Intent (NOI) is required to be submitted and coverage granted before land disturbances over 1 acre commence. For questions, please contact Stormwater Specialist Sarah Anderson (sarah.anderson@wisconsin.gov).
15. 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.
16. 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, BRRS # 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.
17. If dewatering is required, you will need to contact DNR Wastewater Specialist Sarah Adkins to determine if a dewatering permit is required. If a dewatering permit is required, you will need to obtain that permit/approval prior to any dewatering activities. Sarah can be reached at Sarah.Adkins@wisconsin.gov or by phone at 920-360-3309.
 18. All of the removed materials must be placed at an upland location outside of the floodway in the location shown on applicant's plans submitted in the application dated 09/05/2023 and updated on 10/27/2023 and approved by the Department with this permit. You must not deposit or store any of the removed materials in any wetland or below the OHWM of any waterway.
 19. This permit complies with the substantive requirements of s. 23.24, Wis. Stats. and NR 109, Wis. Adm. Code.
 20. Bottom materials must be removed by equipment designed to minimize the amount of sediment that can escape into the water. Equipment must be properly sized so that excavation conforms to the plans submitted and allows the work to be done from the banks rather than in the waterway.
 21. Removal must not exceed 184,500 cubic yards and you must dredge to the dimensions and elevations shown on your approved plans submitted in the application dated 09/05/2023 and updated on 10/27/2023.
 22. You are required to install best management practices (such as a silt curtain, turbidity barrier, or similar) in the waterway around your project authorized by this permit and shown on the plans submitted in the application dated 09/05/2023 and updated on 10/27/2023.
 23. A copy of the plans and permit must be provided to every contractor working on the project.

FINDINGS OF FACT

1. Mark Walter, on behalf of Brown County Port & Resource Recovery at 2561 S Broadway, Green Bay, WI 54304, filed an application with this Department on 09/05/2023, under sections 30.20(2) and 30.208, Wis. Stats., to dredge the Fox River located in the SW 1/4, NW 1/4, Sec. 19, T. 24, R. 21E, in the City of Green Bay, Brown County.
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 project includes other state regulated activities, including waterway permit records IP-NE-2023-5-02988 and IP-NE-2023-5-02989.

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, and dredging is a state regulated activity even with a legally established bulkhead line documented along the riverbank of the project site (west bank of the Fox River).
6. The proposed project, if constructed in accordance with this permit 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 permit.
8. The Department of Natural Resources has determined that the agency's review of the proposed project constitutes an integrated 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.
9. The Department of Natural Resources and the applicant have completed all procedural requirements and the project as permitted will comply with all applicable requirements of Sections 30.20 and 30.208, Wis. Stats., and Chapters NR 102, 103, and 345, Wis. Adm. Codes.

The applicant was responsible for fulfilling the procedural requirements for publication of notices under s. 30.208(5)(c)1m., Wis. Stats., and was responsible for publication of the notice of pending application under s.30.208(3)(a), Wis. Stats. or the notice of public informational hearing under s.30.208(3)(c), Wis. Stats., or both. S. 30.208(3)(e), Wis. Stats., provides that if no public hearing is held, the Department must issue its decision within 30 days of the 30-day public comment period, and if a public hearing is held, the Department must issue its decision within 20 days after the 10-day period for public comment after the public hearing. S. 30.208(5)(bm), Wis. Stats., requires the Department to consider the date on which the department publishes a notice on its web site as the date of notice.

10. The stream dredging will not be detrimental to the public interest because the plans and construction details include best management practices within the river to contain the disturbance and water quality impacts during dredging.
11. The activity will not cause environmental pollution as defined in s. 299.01(4), Wis. Stats.
12. No material injury will result to the riparian rights of any riparian owners of real property that abuts any water body that is affected by the activity.

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. Code, 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.

Dated at the Northeast Region Headquarters, Wisconsin on February 2, 2024.

STATE OF WISCONSIN DEPARTMENT OF NATURAL RESOURCES

For the Secretary

By:



Crystal Von Holdt

Water Management Specialist