

#### DEPARTMENT OF THE ARMY U.S. ARMY CORPS OF ENGINEERS, DETROIT DISTRICT 477 MICHIGAN AVENUE DETROIT MI 48226-2550

May 27, 2025

Ms. Kathleen Angel Wisconsin Coastal Management Program DOA/DIR 9th Floor, Administration Building 101 East Wilson Street Madison, WI 53708

Dear Ms. Angel:

The U.S. Army Corps of Engineers (USACE), Detroit District, provides the following updated Coastal Zone Management Act (CZMA; 16 U.S.C. § 1451 et seq.) federal coastal consistency determinations for the proposed deepening of the Menominee Harbor Federal Navigation Project, in Menominee, Michigan and Marinette, Wisconsin. These determinations supersede those provided on January 18, 2024, which were put on hold while awaiting additional information, including PFAS results. The PFAS sampling and results, and other project information, was coordinated with the Wisconsin Department of Natural Resources (WDNR) over the past year in a series of meetings. This resulted in the attached Water Quality Certification preview letter of April 21, 2025 (Enclosure 1).

#### **Proposed Federal Action**

The proposed action includes deepening a 2.7 mile stretch of the federal navigation channel up to 26 feet below the Low Water Datum (LWD) elevation of 577.5 feet (IGLD 1985) plus 2 feet of over depth (Reference figures 1 – 4, Enclosure 2). The quantity of material dredged would be approximately 553,000 cubic yards (CY), including 51,000 CY of bedrock in the upper reaches of the harbor that would be fractured for removal by blasting. With the exception of two dredging units (DMMU6 and DMMU3), all the dredged material would be placed in one or more of three open-water sites in Green Bay, approximately 30 meters in depth and 1/2-mile by 1/2-mile each in area. One of the open-water sites is in Wisconsin waters; the other two in Michigan waters. The bedrock stone would be provided for beneficial reuse, if a beneficial reuse application becomes available, but would otherwise also be placed in the open-water site(s). The WDNR letter (Enclosure) indicates the material is acceptable for open-water placement, except for DMMU6 which should go to a landfill and DMMU3 which should go to an upland site (see Figure 5, Enclosure 2).

#### **Relevant Enforceable Coastal Policies Evaluation**

The USACE has prepared the following updated evaluation of the proposed federal action for consistency with the relevant enforceable policies of the State of Wisconsin Coastal Management Program (CMP).

<u>**Policy 1.2**</u>: An interim goal is the protection and propagation of fish and wildlife and the maintenance of water quality to allow recreation in and on the water to be achieved. (See Wis. Stats.  $\S$  283.001(1)(b))

**Federal Consistency**: The proposed action would be conducted to the maximum extent practicable to avoid negative impacts to fish, wildlife or recreation. Fish window restrictions would be followed as determined at a meeting of January 31, 2024, where both states agreed to allowed dredging from June 1st through October 15th with potential extension to October 30th. Additional precautions, protective of the fishery, will be included in the blasting plan, and may include a more restrictive work window, adjusting the timing of shots, restricting the quantity of explosives per blast, and use of air-bubble curtains (if river conditions allow it) to minimize pressure and vibration impacts to adjacent waters.

**Policy 1.3**: Discharge of effluents, including industrial, municipal and agricultural wastes, into any waters of the state shall not be allowed if they exceed federal and state water quality standards. (See Wis. Stats. §§ 283.11.31, and Wis. Admin. Code ch. NR 221 to 297. See also managed use #8)

**Federal Consistency**: As outlined in the Wisconsin Department of Natural Resources (WDNR) letter dated April 21, 2025 (Enclosure 2), "Dewatering and treatment methods to meet assigned pollutant limitations shall be specified in a discharge management plan that is required to be submitted with an application for WPDES permit coverage." The dewatering operation would be managed to comply with the WPDES permit conditions.

**Policy 1.3.1**: Substances with the potential to cause groundwater contamination shall be regulated to ensure compliance with groundwater quality protection standards. (See Wis. Stats. ch. 160, and Wis. Admin. Code NR 140. See also managed use #33)

**Federal Consistency**: The only material that has potential for groundwater impacts is that which is not certified under Section 401 for open-water placement, namely DMMUs 6 and 3 for the reasons discussed in the WDNR letter. DMMU6 would be taken to a licensed landfill, which would have existing groundwater protective measures in place. DMMU 3 may also be placed in a licensed landfill, but if a lower-cost alternative becomes available, it could be placed upland apart from a licensed landfill. If DMMU 3 material is placed other than in an upland site, we would coordinate that site with the respective state for compliance, including any measures to protect groundwater, if needed.

The dredged material dewatering site, where the material will be prepared for trucking to the upland site, will have containment measures that will prevent any leakage to surface or ground waters with treatment of the water to State standards before being discharged (see response above to Policy 1.3).

**Policy 1.4:** Disposal in the waters of the state of the following defined pollutants shall be restricted: dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (See Wis. Stats. §§ 283.01(13), 283.31(1) and 29.601. See also managed uses #8 and #9)

**Federal Consistency**: As outlined in the enclosed WDNR letter dated April 21, 2025, the State of Wisconsin supports 401 certification for most of the material to be placed at the

open-water sites, with the provision that material from DMMUs 3 and 6 are not to be placed in-water. Only material covered under a valid water quality certification would be placed in the Wisconsin open-water site.

**Policy 1.5**: Because of the importance of Lakes Superior and Michigan and Green Bay as vast water resource reservoirs, water quality standards for rivers emptying into these waters shall be as high as is practicable. (See Wis. Stats. § 281.11. See also managed use #8)

**<u>Federal Consistency</u>**: Noted. The USACE will abide with the water quality requirements of an issued Section 401 water quality certification for this project.

**Policy 1.15.1:** No person may conduct an activity for which the Wisconsin department of natural resources denies a required water quality certification. No person may violate a condition imposed by the department in a water quality certification. (See Wis. Stats. § 281.17(10))

Federal Consistency: See response to Policy 1.4 above.

**Policy 2.22**: No person may discharge dredged or fill material into a nonfederal wetland unless the discharge is authorized by a water quality certification issued by the Wisconsin department of natural resources. No person may violate any condition imposed by the department in a water quality certification. The department may not issue a water quality certification for a nonfederal wetland unless it determines that the discharge will comply with all applicable water quality standards. (See Wis. Stats. § 281.36(2)(a))

**<u>Federal Consistency</u>**: The project does not impact wetlands and will abide by the water quality conditions of an issued water quality certification for the open-water placement of dredged material.

**Policy 3.5**: For a structure or deposit that is not exempt and that is not subject to a general permit, a riparian owner may apply to the Wisconsin Department of Natural Resources for a required individual permit in order to place the structure for the owner's use or to deposit the material. The department shall issue an individual permit to a riparian owner for a structure or deposit application if the department finds that the structure will not materially obstruct navigation, will not be detrimental to the public interest, and will not materially reduce the flood flow capacity of a stream. (See Wis. Stats. § 30.12(3m). See also managed use #7 and 15.)

**Federal Consistency**: As stated in 33 CFR § 336.1 - Discharges of dredged or fill material into waters of the U.S., paragraph (c)(10), Other state requirements: "District engineers should not seek state permits or licenses unless authorized to do so by a clear, explicit, and unambiguous Congressional waiver of Federal sovereign immunity, giving the state authority to impose that requirement on Federal activities (e.g., CWA sections 401 and 404(t), and CZMA section 307 (c)(1) and (c)(2))." The placement of dredged sediment in open water would not be detrimental to the public interest as it meets the contaminant determination portion of the CWA Section 404 (b)(1) Guidelines (40 CFR 230.11[d]) and the USACE will abide by applicable 401 water quality certification

conditions and the CZMA with regard to the placement of dredged material on the lake bottom in Green Bay. The open-water placement will not obstruct navigation as it will occur in waters that are 30 meters in depth and will not obstruct flood flow capacity of a stream as it is 7 to 9 miles offshore in Green Bay.

**Policy 4.6**: The State Historical Society shall review and comment upon the actions of any state agency or political subdivision that may have an adverse effect upon historic properties and ameliorate the adverse effects. (See Wis. Stats. §§1.11 and 44.34(10). See also SCA #1, 5, and 6)

**Federal Consistency**: Not applicable because the federal government is not a "political subdivision." However, we are required under the National Historic Preservation Act (NHPA) to coordinate with the State Historic Preservation Office (SHPO). Coordination of a Programmatic Agreement with the Wisconsin (SHPO) is ongoing. All applicable requirements under the Programmatic Agreement and Section 106 of the NHPA will be complied with prior to construction.

**Policy 4.11**: Unless an individual or a general permit has been issued or authorization has been granted by the legislature, no person may deposit any material or place any structure upon the bed of any navigable water where no bulkhead line has been established or beyond a lawfully established bulkhead line. Exemptions from permit requirements for the placement of a structure or the deposit of material only apply where the structure or material is located in an area other than an area of special natural resource interest and does not interfere with the riparian rights of any other riparian owners. (See Wis. Stats. §§ 30.12 and 30.11. See also SCA #2, and managed use #1, 2, 6, and 7)

**<u>Federal Consistency</u>**: The proposed dredged material placement site(s) are outside of the navigation channel and any special natural resource areas, and do not interfere with the riparian rights of any riparian owner. Otherwise, see also response to Policy 3.5.

**Policy 4.11.1**: For a structure or deposit that is not exempt and that is not subject to a general permit, a riparian owner may apply to the Wisconsin department of natural resources for the individual permit that is required in order to place a structure for the owners' use or to deposit the material. The department shall issue an individual permit if the department finds that the structure or deposit will not materially obstruct navigation, the structure or deposit will not be detrimental to the public interest, and the structure or deposit will not materially reduce the flood flow capacity of a stream. (See Wis. Stats. § 30.12(3m))

**Federal Consistency**: The proposed dredged material open-water placement in Green Bay will not materially obstruct navigation, will not be detrimental to the public interest, and will not materially reduce the flood flow capacity of a stream. Otherwise, see also response to Policy 3.5.

**Policy 4.11.2**: Unless a contract has been entered into with the Wisconsin department of natural resources or authorization has been granted by the legislature, no person may remove any material from the bed of a natural navigable lake or from the bed of any

outlying waters. Unless an individual or a general permit has been issued by the department or authorization has been granted by the legislature, no person may remove any materials from the bed of any lake or any navigable stream. (See Wis. Stats. § 30.20(1))

**Federal Consistency**: "The United States retains all its navigational servitude and rights in and powers of regulation and control of said lands and navigable waters for the constitutional purposes of commerce, navigation, national defense, and international affairs, . . ." (43 U.S. Code § 1314).

#### **CZMA Federal Consistency Determination**

The USACE has determined, in accordance with 15 C.F.R. § 930, that the proposed federal action would be undertaken in a manner which is consistent to the maximum extent practicable with the enforceable policies of the approved State of Wisconsin Coastal Management Program.

We request your concurrence with (or objection to) this updated federal consistency determination. The State of Wisconsin's concurrence will be presumed if we do not receive a response within 60 days plus any extension, if requested, as applicable pursuant to 15 CFR 930.41(b). Please contact Mr. Paul Allerding at 313-226-7590 or me at 313-226-2476 (cell 313-405-2647) if you have any questions or need any additional information regarding this updated federal consistency determination.

Sincerely,

Charles A. Uhlarik

Charles A. Uhlarik Chief, Environmental Analysis Section

Enclosures (2)

#### State of Wisconsin DEPARTMENT OF NATURAL RESOURCES 101 S. Webster Street Box 7921 Madison WI 53707-7921

Tony Evers, Governor

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April 21, 2025

Charles A. Uhlarik Chief, Environmental Analysis Section US Army Corps of Engineers, Detroit District 477 Michigan Avenue Detroit MI 48226-2550

Subject: Menominee Navigation Study; Water Quality Certification preview

Dear Mr. Uhlarik:

As requested by the United States Army Corps of Engineers (USACE) on February 24, 2025, this letter outlines the Wisconsin Department of Natural Resources (Department) evaluation and authority for the determination of suitability for open water placement of dredge material generated from the proposed Menominee River deepening project. The Department is requiring upland disposal of an estimated 30,000 cubic yards (cu yds) of dredge material from the project. This material is less than 10% of the approximately 400,000 cu yds of material targeted for dredging and open-water disposal. Following is the rationale and referenced regulatory authority supporting this decision. Adhering to the disposal requirements described below as project design continues will support the Department's issuance of a Clean Water Act (CWA) Section 401 water quality certification as well as Wisconsin Department of Administration Coastal Management Program's (DOA CMP) determination of coastal consistency.

Please note that the volume presented above and within this letter are estimates. Volume estimates will be refined during design.

#### DMU 6 (~10,000 cu yds)

The Department is authorized to require an assessment for the potential risk of PFOA and PFOS discharged to surface waters using standard analytical methods (Wis. Admin. Code <u>NR 219</u>). In the Department's letter provided to USACE on June 30, 2023 stating requirements for PFOS and PFOA testing of the Menominee River sediment, the Department indicated that the elutriate concentrations would be used to determine risk of these compounds to surface waters. Based on the report, Dredge Management Unit six (DMU 6) contains material that exceeds Wisconsin's PFOA surface water criteria of 20 nanograms per liter (ng/L) (Wis. Admin. Code <u>NR 102.04 (8) (d)</u>) for drinking water sources (Lake Michigan is a designated drinking water source). The elutriate sample for the "A-layer" material in this unit was 44 ng/L of PFOA. Because there are exceedances of State surface water PFOA criteria in the elutriate, this material must be managed separately and does not qualify for open water disposal. Likewise, the Department has determined the material comprising and surrounding sample locations 30 and 31 to a depth of 25' (referenced to Lake Michigan Low-Water Datum) is a potential risk to surface waters of Green Bay for PFOA and therefore must be disposed in a licensed landfill. Any discharge



during dewatering of this material must be properly managed to meet State surface water quality standards as outlined in Wisconsin Administrative Code Chapter <u>NR 106.98 (4)</u>. Furthermore, any discharge resulting from dewatering the dredged material to waters of the state requires a wastewater discharge (WPDES) permit, in accordance with s. 283.31, Wis. Stats. That permit will have pollutant limitations assigned based on the elutriate results and may require some type of treatment to meet those limitations. Dewatering and treatment methods to meet assigned pollutant limitations shall be specified in a discharge management plan that is required to be submitted with an application for WPDES permit coverage.

- Samples for elutriate testing were composited laterally across the entirety of each of the 10 individual DMUs, such that a composite of material from six or seven individual sample locations represents approximately 45,000 cu yds of dredge material. The PFOA elutriate results for DMU 6 are being governed by sample locations 30 and 31:
  - The existence and concentration of PFOA within the A-layer of sediment sample core 31 is responsible for the criteria exceedance for the entire DMU 6 A-layer and would likely also trigger an exceedance if the elutriate from the individual A-layer of core 31 were tested.
  - While there is no A-layer material at core 30 sample location, PFOA registers across the upper four feet of the sample profile and includes the maximum concentration (570 ng/kg) found throughout the entire project area. As with sample location 31, it is likely that an elutriate test of the sample 30 B-layer material would exceed the 20 ng/L criteria.
- As previously stated, the Department required elutriate testing to help determine the potential risk of PFOS/PFOA contamination to surface waters. USACE requested that the state consider further dilution of the elutriate samples using their STFATE model. The Department will not be utilizing this model for an assessment of risk of PFOA to surface waters for the reasons outlined below:
  - Under Wisconsin's water quality certification, the Department is required to ensure activities have a reasonable assurance that water quality will not be impacted (Wis. Admin. Code NR 299.01 (2)). The position of the Department is that the exceedance of the State's water quality standard in the elutriate samples is sufficient evidence that discharging the material from DMU 6 identified to have elevated levels of PFOA poses a reasonable risk to water quality.
  - In order for the Department to accept modeled dilution as a line of evidence for reduced risk, the dilution would have to account for both solids and overlaying water, as both would be part of the discharge. The elutriate sample test does not account for this mixture. Wisconsin's surface water criteria for PFOA are applicable to the total fraction in surface waters (Wis. Admin. Code NR 102.04 (8) (d)).
  - The STFATE model is not consistent with our procedures for calculating water- quality based effluent limitation for point source discharges to surface waters (Wis. Admin. Code <u>NR 106</u>). The purpose of an elutriate test is to characterize the wastewater that is generated from the dewatering process so that the Department can assign pollutant limitations that are as representative as possible of the discharge during the project. Unless part of the discharge management plan as required by the WPDES permit includes procedures to dilute the dewatering wastewater prior to discharge, the results from a dilution model are not

applicable. Those procedures would need to be specified in the discharge management plan, which would need to be approved, prior to accepting the results of the dilution model.

#### DMU 3 (~ 20,000 cu yds)

In DMU-3, woody debris is present throughout the sediment samples to a degree such that the material composition is significantly different from the sediment bed at the three open water disposal locations. In addition, this woody material appears to be correlated to sediment samples with elevated concentrations of PFAS "precursors"; compounds known to break down into PFOS. Most woody debris in the Lower Menominee River originated from historic lumber mill practices, and this material has commonly been found to be associated with high levels of arsenic due to area-wide contamination caused by industrial release of an arsenical herbicide. Because this organic debris would have been removed by the laboratory during sample preparation, there is no data to confirm that arsenic is not an issue with the woody material in this DMU. Unless evaluated under an approved plan, the material should be disposed as a solid waste. Details would be required in the discharge management plan as part of the WPDES permit to describe how the woody debris would be separated from and removed from the dewatering discharge to meet permit requirements. Additionally, this woody debris would not be allowed for open water disposal consideration under the following State narrative water quality codes:

- <u>NR 102.04(1)(b)</u> Floating or submerged debris, oil, scum or other material shall not be present in such amounts as to interfere with public rights in waters of the state.
- <u>NR 102.04(1)(d)</u> Substances in concentrations or combinations which are toxic or harmful to humans shall not be present in amounts found to be of public health significance, nor shall substances be present in amounts which are acutely harmful to animal, plant or aquatic life.

Thank you for inviting the opportunity to present these determinations as a preface to the upcoming State of Wisconsin S.401 Certification decision. If you have any questions, please don't hesitate to contact us.

Sincerely,

Kay Lutze

Waterways NER Field Supervisor

cc: Steven Check, USACE Jason Miller, USACE David Moore, USACE Karen Keil, USACE Abby Hendershot, EGLE Amy Peterson, EGLE Gary Kohlhepp, EGLE Lee Schoen, EGLE Matt Smar, EGLE Mathew Wesener, EGLE Rhonda Oyer, EGLE Stephanie Kammer, EGLE Connie Antonuk, DNR Benjamin Callan, DNR Wade Strickland, DNR Heidi Schmitt Marquez, DNR Michael Kowalkowski, DNR Sarah Szabo, DNR Rae Ann Eifert, DNR James Killian, DNR Kathleen Angel, DOA



The commercial harbor for Menominee, Michigan and Marinette, Wisconsin, comprises the 2.5-mile navigable reach of the Menominee River between its mouth and the privately owned dam, and a dredged channel to open water in Green Bay.



## **STUDY AREA**

#### Menominee Harbor, Michigan & Wisconsin



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\* Outer Approach Channel currently maintained to maximum 300' width.





# FINAL ALTERNATIVES ARRAY

Alternative 1, the No Action alternative, is analyzed for comparison with the action alternatives. Taking no action would mean continuing current operations and restrictions at Menominee Harbor with no improvements to the Federal navigation channel. All physical conditions at the time of this analysis are assumed to remain. The No Action is the base condition to measure action alternatives.

Alternative 2 consists of deepening the Lower Reach of the Federal navigational channel to 22 feet below LWD +/- 2 feet overdepth.

Alternative 3 consists of deepening the Lower Reach of the Federal navigational channel to 24 feet below LWD +/- 2 feet overdepth.

Alternative 4 consists of deepening the Lower Reach of the Federal navigational channel to 26 feet below LWD +/- 2 feet overdepth.

Alternative 6 consist of deepening the entire Federal channel (2.7 miles) to 26 feet below LWD +/- 2 feet overdepth. Alternative 6 is also considered the sponsor supported plan.



Figure 2. Alternatives. Note Alternative 5, which consists of deepening the harbor to 28 feet, was screened out of the final alternatives array because it was not cost efficient due to a lack of commercial transportation benefits from the additional 2 feet.



Authorization:

material

excavated

U.S. ARMY

channel to 26 Feet

open water placement.

11011

**US Army Corps** 

of Engineers.

### **TENTATIVELY SELECTED PLAN: ALTERNATIVE 6**



Figure 3. Tentatively Selected Plan (TSP).



Figure 4. Dredged material placement sites considered. NOTE: The nearshore placement alternative was dropped from further consideration because the grain size of the dredged material was not suitable to nearshore placement.



-6





DMMU-3

Consists of approx. 15,000 cyds Of non-natural woody debris



US Army Corps of Engineers

Consists of approx. 7,500 cyds

Dredged Material Management Units (DMMUs) of concern to the states re open-water placement.

Figure 5. Two areas where the dredged material is not considered suitable for open-water placement by both states, Michigan and Wisconsin.