

Update to... Public Rights in Milwaukee's Fresh Coast: Is the Proposed Dredged Material Management Facility an Opportunity for the Community?

Highlights

- In 2022, the Center for Water Policy's published research explained why the Dredged Material Management Facility (DMMF) must be consistent with the state's public trust doctrine; we identified the Clean Water Act's Section 401 Water Quality Certification as a decision point where the Wisconsin Department of Natural Resource (WDNR) could require the protection of public trust rights.
- In October 2023, the WDNR issued a Section 401 Water Quality Certification for the DMMF.
- The Certification requires the end use of the DMMF must be consistent with the public trust doctrine. It identifies the City of Milwaukee as the entity that has the responsibility to select an end use of the new 42 acres of lakefront land that is consistent with public rights.

Introduction

On October 5, 2023, the WDNR issued a Water Quality Certification for the DMMF that included conditions requiring public rights protections. Here we highlight condition 14, which requires the fill to be clean soil, and condition 24, which requires the end use of the DMMF to be consistent with public trust rights. These conditions help lay the foundation for stakeholders to work with the City on a vision for future use of almost 42 acres of new lakefront land. To view the full Water Quality Certification, visit <https://uwm.edu/centerforwaterpolicy/wp-content/uploads/sites/667/2024/02/401-Cert-decision-on-DMMF-Oct-2023.pdf>

Quotes from WDNR's Water Quality Certification for the DMMF

Condition 14 of the Water Quality Certification states:

"All fill authorized for the construction of the DMMF shall be free from hazardous substances . . . free from solid waste . . . , and must consist of clean, suitable soil . . ."

"Justification: Pursuant to ss. NR 102.04(1)(a) and (b), Wis. Adm. Code, objectionable deposits or debris shall not be present in amounts that interfere with public rights and interests in waterways."

Condition 24 of the Water Quality Certification states:

"The end use of the DMMF shall be determined by the City, consistent with the terms of the submerged lands grant and the public interest in navigable waters pursuant to the public trust doctrine and water quality standards."

"Justification: To ensure compliance with state water quality standards in chs. NR 102 and NR 299, Wis. Adm. Code. Pursuant to s. NR 299.04(1)(b)6., Wis. Adm. Code, the proposed activity must comply with public interest and public rights standards related to water quality."

Next Steps for Stakeholders

public trust use rights.

- Review our prior [research](#) on this and work with City leaders to identify an end use of the DMMF beneficial to and consistent with promoting