

# Framing the Issues

## Laws, Regulation & Policies



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## Agenda

- Background on Great Lakes dredging
- Federal laws and regulations
- USACE dredging rules and policies
- Big picture

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# Background

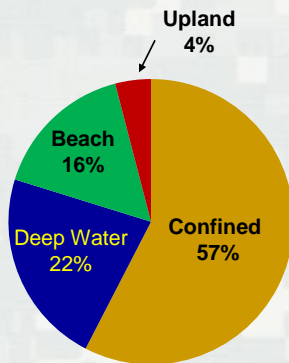
- USACE dredges 2-4 million cubic yards annually from 10-20 Great Lakes harbors
- Permit dredging typically < 1 million cubic yards per year with smaller quantities from 20-40 sites

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# Background

## Dredged Material Management Options



Average Annual Disposal by Volume

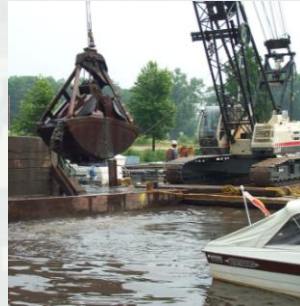


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# Background

- Decisions about where to place dredged material are not unilateral and involve several parties:
  - USACE (navigation or 404 permitting)
  - USEPA and other federal agencies
  - State regulatory agencies
  - Port authority and local government
  - Permit applicants



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# Background

- Decisions about where to place dredged material must address several factors:
  - Legal and regulatory requirements
  - Economic considerations
  - Cost-sharing responsibilities
  - Social and political acceptance

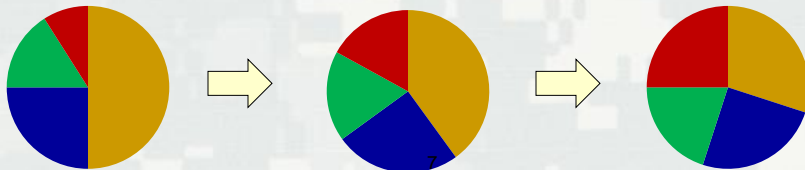


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# Background

- Dredged material management practices are subject to local and regional trends
  - Contaminant source control
  - AOC/Legacy cleanup
  - Declining capacity in existing CDFs
  - Changes in cost-sharing responsibilities
  - Changes in budget priorities



## CWA Section 404

- Secretary may issue permits for discharges of dredge and fill material into navigable waters
  - Specified disposal sites
  - Guidelines developed by USACE and USEPA
  - Non-prohibited discharges
  - Delegation of permit authority to states

# CWA Section 404

- Section 404(b)(1) Guidelines developed in 1975 and amended in 1980 require consideration of following factors:
  - physical & chemical characteristics of aquatic ecosystem;
  - biological characteristics of the aquatic ecosystem;
  - special aquatic sites, and;
  - human use characteristics.



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# CWA Section 404

- Contaminant Determination
  - Determine the degree to which the material proposed for discharge will introduce, relocate, or increase contaminants.
  - This determination shall consider the material to be discharged, the aquatic environment at the proposed disposal site, and the availability of contaminants.

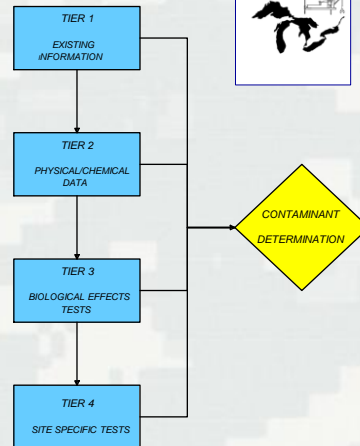
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# CWA Section 404

- Testing & Evaluation Guidance

- National guidance published in 1972 and 1998
- Great Lakes guidance published in 1998
- Tiered approach
- Go only as far as needed to make contaminant determination



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# CWA Section 401

- State Water Quality Certification

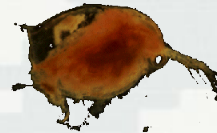
- Requirement for the issuance of federal license or permit for discharges
- Part 230.10 (a)(5)(b) of the Guidelines states that no discharge of dredged or fill material shall be permitted if it “causes or contributes, after consideration of disposal site dilution and dispersion, to violations of any applicable state quality standards”

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# CWA Section 401

- Compliance Determination

- Elutriate testing in tier 2 is used to evaluate water column compliance with state numerical standards
- Open water disposal site boundaries are generally used as limits of mixing zone
- Biological testing in tier 3 used when tier 2 is inconclusive or to evaluate cumulative effects of multiple contaminants



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# CWA Section 401

- Areas of Disagreement

- Non-numerical policies, requirements, or prohibitions that are not scientifically based
- Requirements for testing or monitoring that are not supported by Guidelines, guidance, or “reason-to-believe”

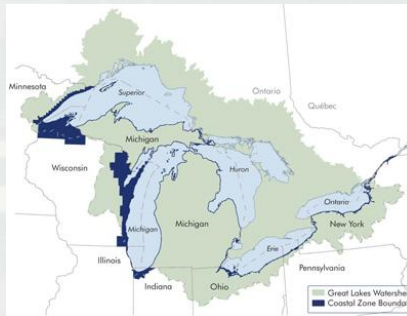


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# Other Federal Laws

- Coastal Zone Management
  - State CZM plans may identify sensitive resources to be avoided or encourage beneficial use of suitable dredged material in coastal zone
  - USACE policy is to comply to state CZM plans to the maximum extent practicable



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# USACE Policies

- Regulatory (404 permits)
- Navigation Projects
  - Non-federal responsibilities
  - Dredged material management plans
  - Federal standard
  - Budget prioritization
- Beneficial Use of Dredged Material
- Dredged Material Disposal Facilities

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# Navigation Projects

- Project-specific authorities
- Non-federal responsibilities vary
  - Cost sharing construction
  - Cost-sharing maintenance
  - Providing disposal sites
- Budget priority
  - Based on risk and criticality of project, cargo tonnages, return on investment, and importance to other parts of Great Lakes system

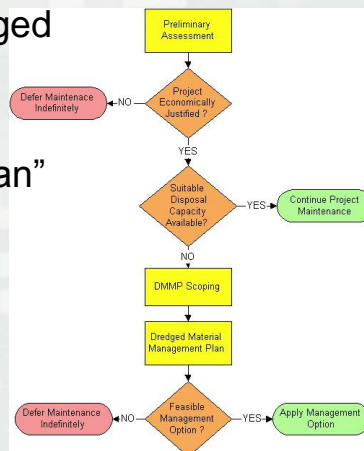


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# Navigation Projects

- Dredged Material Management Plans
  - 20-year strategy for dredged material
  - Define and apply Federal Standard into the “Base Plan”
  - Evaluate beneficial use possibilities
  - Identify non-federal responsibilities



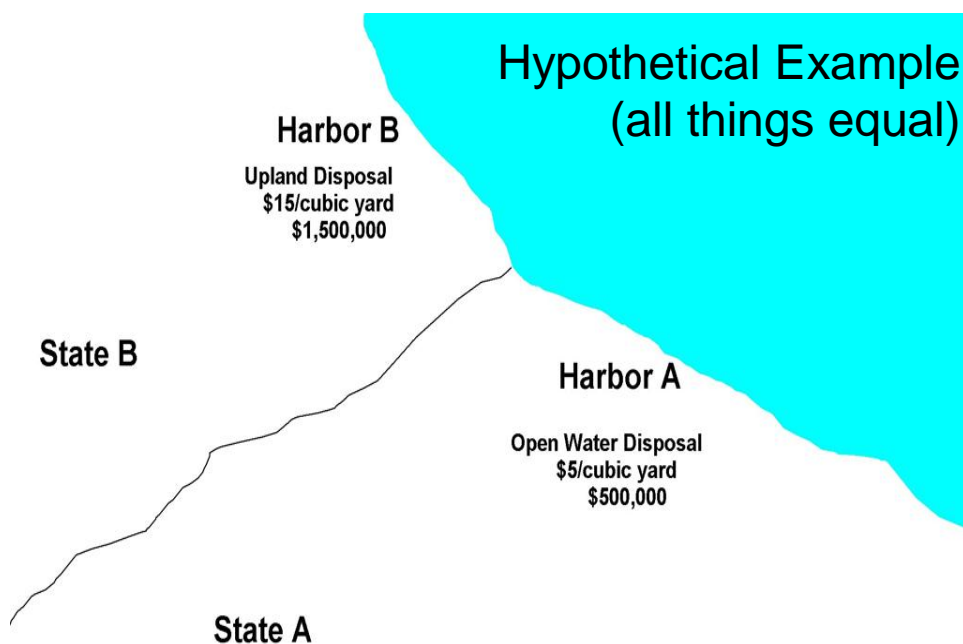
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# Navigation Projects

- Federal Standard
  - Final Rule (33 CFR 209, 335-338)
  - Only applies to federal navigation projects
  - Least costly disposal alternative which is engineeringly sound and satisfies applicable environmental regulations
  - Sets benchmark for federal funding to be allocated to dredged material management at specific navigation projects

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# Navigation Projects

- Federal Standard
  - Rule is ultimately a fiscal management policy that is intended to maximize the national economic benefits from USACE O&M funding
  - Costs for locally-preferred alternative that exceed the Federal Standard/Base Plan are a non-federal responsibility



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# Related Authorities

- Beneficial Use of Dredged Material
  - Section 204, WRDA 1992, as amended
  - Cost-shared projects for aquatic habitat protection, restoration, enhancement
  - Cost-shared projects for coastal storm damage reduction
  - Non-federal partner must provide 35% of costs greater than Base Plan, including LERRDS, and be responsible for long-term maintenance

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# Related Authorities

- Dredged Material Disposal Facilities
  - Section 201, WRDA 1986, as amended
  - Cost-shared projects for disposal of contaminated dredged material
  - Non-federal partner must provide 25-50% of costs, including LERRDS, and be responsible for long-term maintenance



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# Big Picture

- Change is happening
  - Sources of contaminants have been identified and abated
  - Sediments are getting cleaner
  - AOCs are getting readied for de-listing



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# Big Picture

- It's a good thing the sediments are getting cleaner, because:
  - CDFs have very little capacity remaining
  - Competition for limited O&M funding is getting fierce
  - Climate change is not likely to reduce the need for dredging in the Great Lakes



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# Big Picture

- Great Lakes navigation trends
  - Harbors with high maintenance costs becoming less competitive for limited funding
  - State and local agencies are using their own funds to maintain some harbors



Little Lake

Google



# Big Picture

- What must state and local interests do if they want to minimize or eliminate open water placement of dredged material
  - Fulfill their responsibility for leading the search for feasible alternatives
  - Provide lands to meet long-term needs
  - Provide costs that exceed Federal Standard

