

SUMMARY OF DECISION ITEMS

November 8, 2012

APPLICANT: Pattison Sand Company/Kyle Pattison
Landowners: Lee and Joan Pulda
Earl and Amber Pulda
Rodney and Sandra Marfilius
Alan and Kathy Flansburgh (removed from list)

SITE LOCATION: Town of Bridgeport, Grant County; between STH 60 and the Wisconsin River

ACTIVITY: non-metallic mining

FIELD INSPECTION RESULTS/FINDINGS: Fields inspections have been conducted by Mark E. Cupp, Executive Director, both on-site and on-river during the summer of 2012. The Operations Committee also conducted an on-river field inspection. Mike Finlay, DNR Forester, was present with Cupp for an on-site and an on-river field inspection. Brian Hefty, DNR Riverway Manager, and Mike LaBissonaire, DNR Real Estate Specialist, were present with Cupp for an on-site field inspection. Bill Carlson, DNR Forestry Supervisor, was present for an on-site field inspection. Landowners present for on-site field inspections included Lee Pulda, Earl Pulda and Alan Flansburgh. Kyle Pattison, Pattison Sand Company, and members of his team were present for an on-site field inspection with Cupp and have conducted independent field inspections both on-site and on-river. Riverway Board members are slated to conduct a field inspection with Cupp and Pattison at the site on October 11, 2012.

The field inspections revealed that portions of the affected properties are visible from the Wisconsin River. Portions of the properties slated for mining activities are located within the Riverway boundary. Discussions with mining company officials have resulted in elimination of major areas of aesthetic concern (both within the boundary and without).

The LWSRB's authority for issuance of a permit is found in s. 30.43(1), Stats., which states:

The board shall review applications for permits...and issue permits for activities that comply with their applicable performance standards.

In addition, under board powers in s. 30.435(1), Stats.,

The board may impose conditions (on permits).

The board's authority to impose conditions on permits is further detailed in s. 30.44(7), Stats.,

The board may impose on a permit a condition that is necessary to assure compliance with the performance standards (for the activity) or to assure that the activity is completed within a reasonable time.

Section 30.44(3e), Stats, details the regulations on non-metallic mining, which states:

A person shall apply for receive a permit before beginning or expanding nonmetallic mining on land in the riverway that is not visible from the river when the leaves are on the deciduous trees.

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A person may not be issued a permit for nonmetallic mining unless the following performance standards are met:

- 1) Any structure and any stockpiled materials or soil associated with the nonmetallic mining activity may not be visible from the river when the leaves are on the deciduous trees*
- 2) The excavation for the nonmetallic mining activity may not be visible from the river when the leaves are on the deciduous trees.*

Additional permits will be required from the Department of Natural Resources and from the Town of Bridgeport. DNR permits will focus on air quality and storm water. An endangered species and archeological review may be required. The Bridgeport permit will focus on reclamation.

ADDITIONAL FINDINGS: A response to questions made of legal counsel is attached. Pattison Sand Company provided the LWSRB with requested documents related to endangered resources, cultural resources and wetlands. A copy of the reclamation plan filed with the Town of Bridgeport has been provided. Information on blasting and truck traffic has been provided. The company has investigated concerns regarding equipment noise, including noise related to backup safety beepers. The company is reviewing lighting issues at the mine site and has been made aware of “dark sky” compliant guidelines.

A tour of an industrial sand mining operation in Jackson County has been scheduled for Tuesday, November 13th. The Badger Mining Company will provide the tour for board members. The mining operation is much larger than that proposed by Pattison Sand Company but is intended to provide members with an enhanced perspective of industrial sand mining activities.

Pete Flesch, Crawford County Board Chair, has requested the LWSRB hold a meeting in Crawford County to allow local citizenry another chance to comment on the applications.

Three options for the board to consider are:

- 1) Approve or deny the applications at the November 8th meeting;
- 2) Delay action and hold a special meeting in Wauzeka or Prairie du Chien to hear additional public comment and/or decision making purposes; or,
- 3) Delay action and hold the regularly scheduled December 13th meeting (or a future meeting) in Wauzeka or Prairie du Chien to hear additional public comment and/or decision making purposes.

EXECUTIVE DIRECTOR RECOMMENDATION: I believe the appropriate board action for the November 8th meeting is to delay decision making on the application until a special meeting or regularly scheduled next meeting is held in Crawford County. I believe Mr. Flesch’s request is reasonable and a meeting in Wauzeka or Prairie du Chien is appropriate. If the LWSRB chooses to hold a special meeting, there are adequate funds in the budget to do so.

If the board chooses to act on the applications at the November 8th, I maintain the board should approve issuance of a permit with conditions. The proposed conditions and actions, as discussed last month, have been amended and clarified.

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Executive Director recommendation is to approve issuance of a permit for the activity with the following conditions:

- The excavation and any structure, equipment or stockpiled material may not be visible from the Wisconsin River during leaf-on conditions;
- The initial permit shall be for a period of 5 years with an annual review of the activity by the LWSRB;
- **Extensions to the initial permit may be issued for periods up to 5 years;**
- The landowner or his/her agent shall provide a written report and map or aerial photograph showing active mining areas and reclaimed areas;
- The LWSRB shall review any modifications to the plans, as submitted, for compliance with the applicable performance standards;
- The landowner shall notify the LWSRB upon initiation of the project; and,
- The activity shall comply with all other federal, state and local regulations.

In addition, the board should include the following requests in a cover letter to Pattison Sand Company (recognizing the board has no authority to require these actions under law):

- **Hours of operation should be limited to 6:00 a.m. to 6:00 p.m. Monday through Friday;**
- **Noise levels related to beepers on heavy equipment shall be reduced to the minimum db levels allowed under federal or state safety guidelines;**
- **If night operations occur, lighting should be dark sky compliant with lighting focused down and not out or up to minimize diffused lighting and reduce visibility of the site at night; and,**
- **Measures shall be taken to control dust and movement of particulates beyond the minimum standards of state/federal law to minimize adverse impacts on the Riverway.**

In addition, the board should authorize the Executive Director to send correspondence to Riverway municipalities again encouraging review, modification and/or adoption of local ordinances that establish a sufficient regulatory framework to protect public health, safety and welfare and quality of life for Riverway residents and visitors. The LWSRB may wish to request legislative action to further restrict non-metallic mining in the Riverway.

OPERATIONS COMMITTEE RECOMMENDATION: Not available.