

REYNOLDS & ASSOCIATES

ATTORNEYS

407 EAST MAIN STREET

MADISON, WISCONSIN 53703-4276

GLENN C. REYNOLDS
REBECCA A. PAULSON

TEL (608) 257-3621
FAX (608) 257-5581

August 7, 2013

Lower Wisconsin State Riverway Board
202 North Wisconsin Avenue
Muscodia, WI 53573

Re: Pattison Sand Company, LLC's Permit Proposals

Dear Lower Wisconsin State Riverway Board members:

I represent Crawford Stewardship Project ("CSP"), a group of citizens who live in and near the Town of Bridgeport in Crawford County, Wisconsin. CSP's mission is to protect the environment of Crawford County, and to promote sustainable land use, local control of natural resources, and environmental justice.

It is my understanding that Pattison Sand Company, LLC ("Pattison") has requested various permits from the Lower Wisconsin State Riverway Board (the "Board") in connection with its proposal to build and operate an open pit sand mine (the "Mine") in the Town of Bridgeport, Wisconsin (the "Town"). It is also my understanding that you will be deciding whether to issue those permits at your upcoming meeting on August 22, 2013. I am writing to urge you to deny these permits until Pattison meets its burden to show that the Mine will not violate the Riverway statutes.

The Mine is an enormous project. According to the conditional use permit application that Pattison submitted to the Town (the "CUP Application"), Pattison intends to mine an area of 305 acres of land, with mining activities lasting twenty-four hours per day, seven days per week, for up to sixty years. Mining activities would include blasting, crushing and hauling sand with heavy equipment; removing limestone; and excavating sandstone. Pattison plans to have trucks enter and exit the area every six to ten minutes, every day and night of the week, every week of the year, for up to sixty years. The project will take place on four parcels, three of which (the Flansburgh,¹ L. Pulda, and E. Pulda properties) are directly adjacent to the Wisconsin River on

¹ The owners of the Flansburgh parcel have not reached a lease agreement with Pattison at this time. As such, Pattison's conditional use permit application disregarded their parcel of land; the conditional use permit that the Plan Commission ultimately granted did not include the Flansburgh parcel.

their southern borders. As the Board noted on in its December 13, 2012 Summary of Decision Items, “portions of the affected properties are visible from the Wisconsin River.”

After reviewing Pattison’s application, Pattison’s CUP Application, and the Board’s applicable statutes and regulations, I believe there are two major reasons why the Board must deny Pattison’s application for nonmetallic mining permits.

I. Pattison has not met its burden of proof in showing that it will meet the nonmetallic mining performance standards necessary for the Board to issue the permits.

Pursuant to section 30.44(8)(a), Wisconsin Statutes, a person must have a permit to perform nonmetallic mining. The Board has the authority to deny permits to any projects that will encroach upon the visual beauty of the riverway. Specifically, the Board may deny a permit when any of the following is visible from the river when the leaves are on the deciduous trees:

1. Any nonmetallic mining activity;
2. Any structure or stockpiled minerals or soil associated with the nonmetallic mining activity; or
3. The excavation for the nonmetallic mining activity.

Wis. Stat. §§ 30.44(3e)(b), 30.44(8)(b), 30.45(5m).²

Pattison has not offered sufficient evidence to assure the Board that its mining activities, structures, or excavation will not be visible from the river when the leaves are on the deciduous trees. Much to the contrary, the information Pattison has provided in connection with the Mine makes it highly unlikely that none of the three items listed above will be visible from the river when the leaves are on deciduous trees.

The sheer size of the Mine makes it highly unlikely that Pattison will keep the Mine and its activities from being visible from the river. The Mine will be operating continuously, twenty-four hours per day, seven days per week. At full production, about 250 forty-ton trucks would be entering and leaving the Mine daily with loads of excavated sandstone. According to documents submitted to the Wisconsin Department of Natural Resources (the “DNR”), Pattison will remove 3,921,887 tons per year of limestone, and 500,000 tons per year of sandstone – which Pattison will have to stockpile to some extent.

² See also Request for Technical Assistance/Legal Advice on the Lower Wisconsin State Riverway Board’s (LWSRB) authority regarding nonmetallic mining (Nov. 7, 2012), available at <http://lwr.state.wi.us/docview.asp?docid=23984>.

Pattison will also build temporary structures “to be used for office or storage on site,” but has provided no data on how large those temporary structures would be. Pattison will also make frequent use of heavy equipment, such as limestone crushers, backhoes, and excavators. Without more information assuring the Board that none of these activities, structures, stockpiles and machines will be visible from the river, the Board should deny Pattison’s requested permits.

Additionally, the Board should require Pattison to produce evidence that both dust and lighting will remain unseen from the river. The fugitive dust is inevitably a part of Pattison’s “mining activity,” which section 30.45(5m), Wisconsin Statutes, requires to be invisible from the river in order for the Board to issue a permit. Thus far, Pattison has not produced any such evidence. Its assurances to the Board that “no equipment, stockpiles, or mining activity within the LWSR boundary will be visible during leaf-on season” does not account for fugitive dust. Likewise, Pattison’s assurances to the Board that it will “minimize its lighting impacts to the best of its abilities” do not assure the Board that lighting will remain unseen from the river. Much to the contrary, the evidence Pattison has produced thus far indicates that the precise opposite will happen.

The enormous amount of dust the Mine will produce is highly unlikely to remain impossible to see from the river. According to documents Pattison has submitted to the DNR, Pattison’s mine will generate 54 tons per year of dust from truck traffic alone; and another 34.5 tons per year of fugitive dust. The Mine will emit dust from removing topsoil and overburden, stockpiling overburden, blasting, processing dolomite for roads, excavation, transferring excavated materials, returning material to the excavation space, loading, transporting, and reclamation.

The enormous amount of lighting that the Mine will require is highly unlikely to remain unseen from the river. Pattison has thus far declined to limit the Mine’s hours of operation to daytime. Therefore, Pattison will implement significant lighting to illuminate the structures, stockpiles, or excavation sites in throughout the night.

Finally, it is worthy to note that there are also places outside the Lower Wisconsin State Riverway boundary from which Pattison’s mining activities will be visible from the river. Although such places fall outside the Board’s jurisdiction, the fact that mining activity will be visible from the river makes is additional evidence that Pattison is unlikely to make additional efforts to conceal its mining activities.

II. Pattison has not met its burden of proof in showing that it will meet the performance standards for structures.

Section 30.44(1)(b)1, Wisconsin Statutes, requires anyone to obtain a permit before starting “[c]onstruction of a structure” on land in the riverway. While section 30.44(1)(a),

Wisconsin Statutes, excludes certain types of structures, it excludes neither storage nor office facilities – which Pattison intends on building along with the Mine. Therefore, Pattison must also meet the performance standards listed in section 30.44(1), Wisconsin Statutes, such as:

1. Ensuring there is enough vegetation to keep the structure unseen from the riverway;
2. Ensuring that the structure is not higher than the surrounding vegetation during leaf-on season;
3. Minimizing visual impact by ensuring that the structures are colored similarly to the surrounding environment; and
4. Ensuring that the natural slope of the land upon which the structures are situated is 20% or less.

Wis. Stat. § 30.44(1)(c).

Pattison has not provided sufficient evidence that it will comply with the standards listed above. Without having more evidence regarding the specific height, color and location of the temporary structures Pattison proposes to use, the Board does not have sufficient proof that Pattison will comply with the standards imposed by the statutes. Accordingly, the Board should deny Pattison’s permits.

III. The Mine would irreversibly damage the riverway environment that the Board seeks to preserve

The Mine would impact the environment of the Wisconsin River far beyond the narrow questions of visibility before the Board. The Board’s mission is “to protect and preserve the scenic beauty and natural character of the lower Wisconsin state riverway through administration of a program to control land use and development.” Wis. Admin. ch. RB 1.01. The Mine would do the exact opposite: far from protecting the “scenic beauty and natural values of the lower Wisconsin state riverway,” the mine would cause severe damage to the beauty and natural character of the area.

Pattison proposes operations that would continue uninterrupted, every hour of every day of the week for up to sixty years. The potential for serious consequences arising from this level of operation is too strong to be ignored.

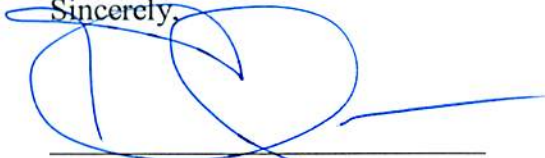
The Mine would likely yield water and groundwater pollution. Indeed, during the consideration of the conditional use permit application, the Town’s Town Board and Planning Commission received information indicating that open pit sand mines like the one proposed cause water pollution from mining, trucking, and other activities, as well as groundwater pollution and withdrawal issues.

More importantly, the stormwater pollution prevention plan Pattison has submitted to the DNR provides no assurance that Pattison will mitigate the potential damage. The plan uses no outfall sampling data from the site. Instead, it merely states that Pattison will use “cost effective” and “best practice” measures to prevent stormwater pollution – without actually describing those measures.

The damage this mine would cause is not merely hypothetical, nor is it easily remediable. The scale and industrial character of the operations, the lack of concrete plans to protect the air and water, and Pattison’s own failure to mitigate the impact of its project could damage irreversibly the beauty and character of the Wisconsin River and riverway and upset forever the fragile balance between allowing for some land development and preserving the area’s natural beauty.

Thank you for your consideration. Should you have any questions on this very important issue, please feel free to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "Glenn C. Reynolds", written over a horizontal line.

Attorney Glenn C. Reynolds