

Report to the Wisconsin Legislature on the Effectiveness of SS. 30.40 – 30.49 (Riverway Law)

Issued by the Lower Wisconsin State Riverway Board

I. Introduction

The Lower Wisconsin State Riverway, encompassing 79,275 acres and extending 92.3 miles from the dam at Prairie du Sac to the confluence with the Mississippi River near Prairie du Chien, was created in 1989 when Governor Tommy Thompson signed Wisconsin Act 31. This historic legislation was a compromise crafted by legislators from both political parties and was the culmination of years of planning and hundreds of hours of public meetings.

Subchapter IV of Chapter 30 Wisconsin Statutes contains the Riverway Law, beginning at 30.40 and continuing to 30.49. This section includes the roles, duties, and powers of the Riverway Board and of the Department of Natural Resources in the management of Riverway properties.

- ⤴ The Lower Wisconsin State Riverway Board was created to administer the Riverway law. The Board is composed of nine members, of which six must be local residents or local elected officials from the affected counties (Columbia, Crawford, Dane, Grant, Iowa, Richland and Sauk).
- ⤴ The Riverway Board administers a system of "performance standards" which are designed to protect the aesthetic integrity of the Riverway. Permits are required for structures, timber harvesting, utility facilities and other activities.
- ⤴ The Department of Natural Resources is responsible for administering a land acquisition program within the Riverway, and for the management of State-owned properties and facilities within the Riverway boundaries.

II. Reporting to the Legislature

Chapter 30.435 enumerates the powers of the Riverway Board. Among the powers, "The board may: Report to the Legislature on the effectiveness of ss. 30.44 to 30.49."

At this time the board is reporting specifically on the effectiveness of ss. 30.44 (3e) **NONMETALLIC MINING. (a) A person shall apply for and 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. (b) A person may not be issued a permit for an activity in par. (a) unless the following performance standards are met:**

- 1. Any structure and any stockpiled minerals 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.**

III. Historical Background on Mining, Quarrying and the Riverway Law

During the 10-year process that led to the creation of the Riverway, many issues were debated, particularly what types of activities would be counter to the Riverway goals and purposes, and the degree to which certain activities would be regulated. Mining and quarrying (now called non-metallic mining) were discussed. At the end of the process it was decided that allowing more mines or quarries in the Riverway would be detrimental to the overall goal of preserving the scenic beauty and natural values of the river corridor.

Through the years there have been changes to the law, through state statutes (passed by the legislature) and through Administrative Code (created by the Riverway Board and authorized by statutes).

The following is a list, in chronological order, of the statutes and administrative code covering mining and non-metallic mining in the Lower Wisconsin State Riverway.

1) Act 31 in 1989 created the Riverway Law ss.30.40. The original statute included the following prohibition: 30.45(5) **"In the Riverway...No person may begin a mining or quarrying activity or expand a mining or quarrying activity."**

2) In late 1991, the Riverway Law was given a fine-tuning. Several sections were amended and a few were repealed, but the prohibition on mining and quarrying remained intact.

3) In 1993, the Riverway Board created administrative codes RB 1 (Lower Wisconsin State Riverway Mission Goals, Objectives and Definitions) and RB 2 (Lower Wisconsin

State Riverway Permit Exclusions, Exemptions and Procedures). As part of these codes, RB 2.07 maintained the general prohibition on mining and quarrying, but allowed an opportunity for mines or quarries that were active in the Riverway prior to its creation to continue such activity "if the activity is visually inconspicuous" and affidavits are filed to establish that the mining/quarrying was active on October 31, 1989 and the location of such mines or quarries. Mining and quarrying continued to be generally prohibited except for the "grandfathered" activities and locations. The "grandfathered" quarries or mines were required to meet the "visually inconspicuous" standard.

4) In 1995, Wisconsin Act 211, changed nomenclature for "quarrying" to "non-metallic mining". The general prohibition on mining was maintained, but "nonmetallic" mining was given a different treatment in new sections.

- 30.44(3e) "Nonmetallic Mining (a) A person shall apply for and 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. (b) A person may not be issued a permit for an activity in par. (a) unless the following performance standards are met: 1. Any structure and any stockpiled minerals 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."

- 30.45 (5m): "No person may begin or expand a non-metallic mining activity on land that is visible from the river when the leaves are on the deciduous trees."

IV. Questions of Intent

Intent is not always spelled out in the statutes and code in ways that provide specific guidance for every issue that may arise. However, the history cited above shows that mining and quarrying were originally considered to be activities that ran counter to the overall goals and purpose of the Riverway. When it was felt the original language of the statute was too restrictive in that it prohibited pre-existing quarries in the Riverway from operating, the law and administrative code were amended. At the time, non-metallic mines were generally small in scale, no more than a few acres, and only sporadically active. Sand and gravel were occasionally mined for nearby roadway construction and maintenance when local needs arose. In 1995 it was believed that setting the standard that such activities shall not be visible from the river during leaf-on conditions was adequate to protect the Riverway resources and the major investment that the people of the State had in the Riverway.

It is safe to assume that industrial scale frac sand mining with the associated alterations of the landscape topography and the increase in noise, dust and light pollution were not envisioned by the Legislature or the Riverway Board when the

general prohibitions on non-metallic mining and quarrying were loosened. Riverway Board Executive Director Mark Cupp's recollection is that the intent of Ch. 30.44(3e) was to provide local governments along the Riverway the opportunity to continue to operate small sand pits to excavate material for winter pavement de-icing and road maintenance purposes.

V. The Problem

The Riverway Board members are unanimous in their opinion that non-metallic mining activity on the scale typical of surface industrial sand mines (100 or more acres) is incompatible with the purpose of the Riverway and mission of the Riverway Board. It is the board's belief that the statutory amendment in 1995 to allow for small gravel quarries and sand pits operated by local governments (30.44(3e) has opened the door to industrial scale frac sand mining in the Riverway. The board wishes to work together with the Legislature to quickly find a statutory remedy before the Lower Wisconsin State Riverway project is rendered moot by a proliferation of industrial scale frac sand mining and its related activities.

VI. Legislative Remedy Requested

To that end we, the members of the Lower Wisconsin Riverway Board, request consideration by the Wisconsin Legislature in replacing the current language of ss. 30.45(5m) with the following:

"No person may begin or expand a non-metallic mining or quarrying activity within the boundaries of the Riverway. The following exceptions to this general prohibition are allowed, provided that all non-metallic mining and quarrying activities are not visible from the river during leaf-on conditions for the deciduous trees and a permit has been applied for and issued by the Riverway Board.

(1) Non-metallic mines or quarries that were operating prior to the establishment of the Riverway. Such quarries may not be expanded beyond the original legal parcel within which they were contained.

(2) Non-metallic mines or quarries owned and operated by local units of government for roadway construction and maintenance within the local government's jurisdictional boundaries."

Non-metallic mining activities under the direction and supervision of the Wisconsin Department of Transportation are not subject to 30.45(5m) or 30.44(3e) per ss.30.455."

We further request consideration of the following amendment **(in bold type)** to ss. 30.44(3e):

"NONMETALLIC MINING. (a) A person **qualifying for one of the exceptions to the general prohibition on non-metallic mining listed in 30.45(5m)** shall apply for and 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.

(b) A person may not be issued a permit for an activity in par. (a) unless the following performance standards are met:

1. Any structure and any stockpiled minerals 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."

Appendices:

- A. Wisconsin Statutes Chapter 30 Subchapter IV (Current Riverway Law)
- B. RB 1 Wisconsin Administrative Code
- C. RB 2 Wisconsin Administrative Code
- D. Mission of the Riverway Board and Additional Factors for Consideration
- E. Industrial Sand in the Lower Wisconsin State Riverway