



August 22, 2016

VIA E-MAIL ONLY

ISM SA Coordinator – DNRISMSA@wisconsin.gov
WDNR OB/7
P.O. Box 7921
Madison, WI 53707-7921

RE: Comments to the Draft Industrial Sand Mining Strategic Analysis

Dear ISM SA Coordinator:

Wisconsin Infrastructure Investment Now, Inc. (WIIN) is a nonprofit organization, and its mission is to educate the public, elected officials and regulators on the societal and economic benefits of the responsible investment in, and expansion of, transportation facilities, renewable and traditional energy projects, mining and other infrastructure projects. WIIN has reviewed the Draft Industrial Sand Mining Strategic Analysis (Draft ISM Strategic Assessment) and appreciates the opportunity to submit comments.

WIIN appreciates that the Department only used data collected with scientifically-accepted, reliable equipment and testing methodologies and primarily only relied upon peer-reviewed studies to reach its conclusions. It is imperative that as the ISM industry continues to mature in Wisconsin, regulators take balanced, unbiased and responsible approaches to industry analyses. The Draft ISM Strategic Assessment was clearly one such balanced, unbiased and responsible industry analysis. WIIN thanks the Department and all staff who contributed to the product.

As a whole, WIIN believes that the Draft ISM Strategic Assessment is thorough and contains robust analyses, but WIIN would like to provide additional information or comments on a few sections.

Wisconsin Infrastructure Investment Now, Inc.
4230 East Towne Blvd. #245
Madison, WI 53704
www.wisconsininfrastructure.com

Section 2.3.17 Current Trends (Groundwater)

The section accurately summarizes ISM groundwater withdrawals. However, the total gallons withdrawn and the increase in withdrawals over the last several years for the ISM industry should also be analyzed in relation to all industrial groundwater use so as to provide perspective on the statewide impact of the ISM groundwater use.

According to the Department's Wisconsin Water Use, 2014 Withdrawal Summary,¹ the total amount of groundwater used by all industries in 2014 was 224 billion gallons. According to the data in the Draft ISM Strategic Assessment, the ISM industry accounted for 1.8 billion gallons of groundwater use in 2014, or 0.8% of all groundwater used in the state. Therefore, while the ISM industry's groundwater use has increased, the percentage of groundwater use on a statewide basis across all industries remains very small, under 1%.

Section 3.2.1 Local Roads

The Draft ISM Strategic Assessment provides that Wis. Stat. § 349.16 allows local units of government to require ISM owners to enter into "road upgrade maintenance agreements" or RUMA's. WIIN respectfully disagrees with the Department's summary of Wis. Stat. § 349.16.

In general, a local unit of government must maintain its roads sufficient to withstand Class B weight limit traffic and is prohibited from permanently restricting traffic to less than Class B weight limits. *See* Wis. Stat. §§ 348.15-.16; 66 Op. Att'y Gen. 110, 111 (1977) (concluding Wis. Stat. §§ 349.15 and 349.16 did not authorize a county to permanently prohibit truck traffic from a highway or permanently limit the truck traffic to less than Class B weight limits); 39 Op. Att'y Gen. 446, 447 (1950) (concluding the Wisconsin legislature intended to set up minimum highway standards, unify and modernize the highway system and remove "a hodgepodge of confusing local rules and restrictions"). Under limited circumstances, a private party may be liable for damage to local roads. Pursuant to Wis. Stat. § 349.16(1)(c), a local unit of government may order a private entity to suspend use of a local road but only if the person is "causing or likely to cause" damage to the roads and only if there is no agreement in place that will *reimburse* the local unit of government for the damage done to the roads. Nothing in Wis. Stat. § 349.16 authorizes a local unit of government to condition use of local roads upon entering into an extensive RUMA, such as the Chippewa County example cited in the Draft ISM Strategic Assessment.

WIIN believes ISM owners should assess their impact on local roads and responsibly respond to the legitimate concerns that truck traffic, particularly overweight truck traffic, is causing local roads to deteriorate faster than they would have absent the ISM. However, a recent study released by the U.S. Department of Transportation found that 71% of Wisconsin's roads are in poor or mediocre condition and 14% of Wisconsin's bridges are structurally deficient or

¹ Wisconsin Water Use, 2014 Withdrawal Summary, available at <http://dnr.wi.gov/topic/WaterUse/documents/WithdrawalReportDetail.pdf> (last visited August 17, 2016).

functionally obsolete.² The American Society of Civil Engineers' (ASCE) most recent report card gave road quality in the United States a "D" grade.³ The Wisconsin Taxpayer Alliance's report card rated Wisconsin's highway condition as a "D."⁴ A recent analysis by the Wisconsin County Highway Association supports the findings of the U.S. DOT, the ASCE and the Wisconsin Taxpayer Alliance.⁵

The ISM industry did not cause the current transportation crisis in Wisconsin. Yet, in many instances, ISM owners are shouldering far more than their fair share of the cost of infrastructure improvements. While individual ISM owners appear to have successfully negotiated voluntary agreements with local units of government, WIIN cautions the Department against suggesting that local units of government have the legal right to obligate anyone to enter into a RUMA as a condition of using local roads.

3.5 Property Values

In the Property Values section, the Department states: "Property values on adjacent residential parcels may decrease due to proximity to the mine operation and associated concerns about noise, traffic, air quality, surface water and groundwater quality, viewscape, etc." The Department does not cite to any source for this conclusion.

WIIN is aware that anti-mining activists routinely claim property values decrease due to ISM's. However, "repeating an unsupported statement often and loud does not make it true."⁶ A recent policy study by The Heartland Institute summarized the available studies on the effect of nonmetallic mining on property values. The Heartland Institute's review of the available literature concluded: "There are *no credible studies* supporting claims of widespread and predictable property value declines associated with industrial sand mining or any other similar nonmetallic mining activity."⁷ The Heartland Institute further summarized the credible, peer

²U.S. DOT Road and Bridge Data by State, available at <https://www.transportation.gov/policy-initiatives/grow-america/road-and-bridge-data-state> (last visited April 12, 2016).

³ American Society of Civil Engineers, 2013 Report Card for America's Infrastructure, available at <http://www.infrastructurereportcard.org/> (last visited April 12, 2016).

⁴ Wisconsin Taxpayers Alliance 2015 Report Card, available at <http://cdn.p2a.co/49430/HmTowho4iN1452717209QWEZmeJ2G3> (last visited April 12, 2016).

⁵ See WCA and WCHA Respond to Wisconsin Department of Transportation Comments on Statewide Road Conditions (March 17, 2016), available at http://www.thewheelerreport.com/wheeler_docs/files/0317wcha.pdf (last visited April 12, 2016).

⁶ Social Impacts of Industrial Silica Sand (Frac Sand) Mining: Land Use and Value, The Heartland Institute, at p. 24 (Feb. 2016), available at <https://www.heartland.org/publications-resources/publications/social-impacts-of-industrial-silica-sand-frac-sand-mining-land-use-and-value> (last visiting August 18, 2016).

⁷ *Id.* (emphasis added).

reviewed studies as follows: “Between 1981 and 2011, several studies, using technically sound methods, examined the relationship between nonmetallic mining and property values. Each of the studies concluded there was no consistent relationship between mines and property values.”⁸

In closing, WIIN appreciates the opportunity to provide comments on the Draft ISM Strategic Assessment. If the Department has any questions concerning WIIN’s submission, please contact me at your convenience.

Sincerely yours,

/s/ Terry McGowan

Terry McGowan
President

⁸ *Id.* (emphasis added).