

NATURAL RESOURCES BOARD

Conference Call Minutes

A special meeting of the Natural Resources Board via telephone conference call was held Monday, September 8, 2003, in Room 774B of the State Natural Resources Building (GEF 2), 101 South Webster Street, Madison, Wisconsin.

The meeting was called to order by Chairman Trygve Solberg at 10:04 a.m.

Participating Board Members:

Trygve A. Solberg, Chair (Minocqua)
James E. Tiefenthaler, Vice-Chair (Waukesha)
Gerald M. O'Brien, Secretary (Stevens Point)
Herbert F. Behnke (Shawano)
Jonathan P. Ela (Madison)
Howard D. Poulson (Madison)

Non-Participating Board Members

Stephen D. Willett (Phillips)

ORDER OF BUSINESS

1. Adoption of Emergency Order WM-37-03(E) - revision of Chapters NR 10 and NR 19, Wis. Adm. Code, pertaining to the regulation of deer feeding and baiting in counties considered at highest risk for the spread of chronic wasting disease and bovine tuberculosis.

Tom Hauge, Wildlife Management Director, stated that Chronic Wasting Disease (CWD) was a difficult disease to beat. A week ago a Nature journal article underscored this view. In that article research documented that CWD can be efficiently transferred from deer to deer. Also, in this article, the author suggests that concentrating deer in captivity or by feeding them artificially may facilitate the transmission. The emergency rule that the Board is considering today will ban baiting and feeding in 22 southern counties either where CWD or TB have been identified. This rule is a stop gap measure. We would rather not have to use the emergency rule process to address these needs but we have simply run out of time. Wisconsin's archery season begins this Saturday and I think, as we all know, that fall and winter are the time period that baiting and feeding is most commonly practiced. If approved, this rule will go into effect, upon publication in the official state newspaper probably this Thursday. The rule would remain in effect for 150 days and can be extended by JCRAR approval for two 60-day periods for a maximum of 270 days. If approved today, the Department recommends seeking JCRAR's approval to let this rule stay in place for the full 270 day period. This would keep the rule in place to approximately June 6 or 7, 2004.

Chairman Solberg called upon the Board Members for questions or comments.

Mr. Tiefenthaler asked Mr. Hauge about the Nature study. He stated that he didn't get to review the full article and wanted to know how large the enclosure was in the Colorado study. **Mr. Hauge** responded that the article did not speak to the size of the enclosure. **Mr. Tiefenthaler** asked Mr. Hauge if the Department knew of any TB in the wild deer herd in the State right now. **Mr. Hauge** responded no. But they did screen (Mr. Tiefenthaler interrupted and Mr. Hauge did not finish his sentence). **Mr. Tiefenthaler** asked if there was TB in the state anywhere behind agricultural pens. **Mr. Hauge** responded, yes, TB has been found in at least three elk herds in Manitowoc County. **Mr. Tiefenthaler** asked what the Department of Agriculture, Trade, and Consumer Protection (DATCP) had done or what has the Department of Natural Resources (DNR) done as a result of this positive. **Mr. Hauge** responded that those herds had all been

quarantined, animals that needed to be disposed of and tested. He stated that he believed they have also done trace outs to those herds as well. **Chairman Solberg** asked when that was done. **Mr. Hauge** stated he believed it was maybe three years ago or sooner when they first had positive cases. About ten years ago there was a red deer farm in Barron County that was TB positive and that herd was depopulated. TB has been a concern and has been around for awhile. We had one instance where a Holstein heifer was transported into the state, but was caught fairly early. **Mr. Behnke** responded that that herd was completely destroyed and he thought there were several hundred animals that were totally quarantined for six months and then ordered to be slaughtered. The owner told Mr. Behnke that there were some factors where indemnity payments did not apply in this particular case. The herd was being geared up for embryo transplants for the AI Organizations around the world and they had a number of embryos that had been transplanted into these animals that were worth many thousands of dollars each. There were no indemnity payments for the embryos because state law pays only for live animals that they have ordered to be slaughtered. So, in the end process, this owner told Mr. Behnke that his out of pocket costs were over \$300,000. That was from one animal that tested positive that was brought in from Michigan.

Mr. O'Brien questioned if CWD or TB is discovered subsequent to the Board making this rule in a county that is not included in the emergency rule now. He asked if this rule were broad enough to include that county automatically then or would they have to do something else to get this new county included. **Attorney Tim Andryk** responded that the rule specifically allows for counties to be added to the rule during its effective period by a Secretary Order. If there is a positive for TB or CWD found elsewhere in the state, any county within ten miles of that positive would be included in the feeding and baiting ban during the effective period of this rule.

Mr. Tiefenthaler commented that the Board knows now that what JCRAR has done by letting the lapse of the existing rule, thereby allowing 10 gallons unlimited feeding statewide. Mr. Tiefenthaler proposed an amendment to the rule to not allow that and to have this emergency rule take effect this hunting season, allowing a two gallon limit statewide other than these areas, as defined in this rule, during the hunting season rather than allowing a ten gallon limit which would be inconsistent with what he thinks is the mood of this Board, the mood of the Department, and the wishes of the Department. Also, to allow feeding north of Highway 54 with a two gallon limited, as defined by the original JCRAR proposal that was defeated a few weeks ago. Mr. Tiefenthaler offered this as an amendment to the rule to maintain a consistency rather than allowing unlimited feeding with ten gallons of baiting.

Mr. Behnke responded, Mr. Chairman I would suggest that this is not within the jurisdiction of this Board, at this time, and especially if it pertains to the issue that we have before us today. **Chairman Solberg** asked for guidance from Attorney Andryk. **Attorney Andryk** responded that we have public noticed Board action to propose action on an emergency rule, so the Board could make amendments to the emergency rule germane to the subject matter. The Board could agree to amend it and vote on it in that way to implement it in that manner. **Mr. O'Brien** asked for clarification of Mr. Tiefenthaler's amendment. **Mr. Tiefenthaler** responded, keep what is being proposed and add an amendment for a limiting factor on what is now open feeding statewide, to a two gallon limit north of Highway 54 and to allow baiting during the hunting season but only within the confines of a two gallon limit for 40 acres, one site with less than 40 acres, and to broadcast rather than dumping in a pile. Right now, the way it is, because of the action of JCRAR, we have ten gallons with no limit to the amount of site per acre and we have unlimited feeding statewide. He stated that he didn't think that the Board Members wanted that.

Chairman Solberg asked of Attorney Andryk, since that rule of 5:00 on August 29 was over, how that affects them. **Attorney Andryk** responded, that rule is suspended and JCRAR is introducing legislation to uphold the suspension of that rule. This is a different rule. It is an emergency rule as opposed to a permanent rule and it is on the baiting and feeding subject. Our proposal is for the 22 counties that we have described. When you start adding all the things that JCRAR wanted in it, it becomes a little more of a gray area in terms of how far the Board's authority on the emergency rule goes. However, if JCRAR, the co-chairs who are basically the policeman for the rule process are okay with it, it is something that the Board could probably do. **Mr. Behnke** asked Attorney Andryk if this was something the Board could address at a

later date from what is now before the Board. He stated they must get something in place by Saturday of this week. **Mr. Poulson** asked why you would want to go to a later date. **Mr. Behnke** responded that his reason for that is that he is not against what Mr. Tiefenthaler proposes. His only concern is the possibility of the hindrance of the rule effectiveness on the opening day of the season this Saturday. If this was to cause any type of delay because we added something to it, then we would not be doing justice of what we are trying to accomplish at this time. That was his only concern. **Chairman Solberg** stated that he agreed with Mr. Behnke. If this runs out on Sunday night we are adding to the problem. **Mr. O'Brien** asked Attorney Andryk if he felt comfortable that with this amendment, the original proposal as the Board originally addressed it, would be okay and would go into effect timely and would this amendment not cause any problems with JCRAR. **Attorney Andryk** responded, that if the amendment is what JCRAR is asking us to do it probably would not cause problems with them. In terms of the effective period of this emergency rule, we have to get it to the State Journal today and they need to get it into their pre-publication process for publication on Thursday, September 11. We can write it up today and change it today, as the Board approves it and get it into effect before the bow season on Saturday, September 13. We can make amendments that are germane and within the scope of this rule proposal if the Board so adopts them. **Mr. O'Brien** asked if there were any technicalities or legalities that would affect this or that would be raised to put in a fundamental ban that would cause trouble. He stated that he does like Board Member Tiefenthaler's idea. If he thought there was no problem whatsoever of getting through everything he would certainly be supportive of it. **Attorney Andryk** responded, that the argument that they would hear is, if you are going to take this action and adopt JCRAR's recommendations, they should have done that in the permanent rule rather than coming back a week later and doing it in the emergency rule. Now, we could get the permanent rule, bring that back into play, notice a meeting and amend a permanent rule to put in JCRAR's changes and ask them to withdraw an objection. **Chairman Solberg** asked if this could be done at a later date. **Attorney Andryk** responded, yes. We would have to notice the Board Meeting 24 hours in advance to do that, to act on that rule. **Mr. Hauge** responded, that the Board would still need to take some action on the emergency rule today. **Chairman Solberg** asked that if something could happen differently with this amendment, what else could the Board do at this time. **Mr. Tiefenthaler** stated they could not see why JCRAR would object to this amendment from what they originally proposed to the Board. He has spoken to a number of members of JCRAR and they are looking at stop gap measures when they go into session with legislative activities. He stated that he would much rather have this emergency rule done rather than having to rush with legislative activities in order to essentially do the same as what his amendment does, the amendment that he is proposing now. **Chairman Solberg** responded that he doesn't have a problem with it, he is just worried about this emergency rule not being passed.

Mr. Ela stated that he has a concern about the enforceability and the problems that the Department would run into with the two gallon and broadcast kinds of distinctions. Mr. Ela asked if the Warden's could address this issue, as to whether this is a feasible limitation. **Mr. O'Brien** stated that this would always be something that would be a problem no matter what. He liked the idea that they were becoming more restrictive with Mr. Tiefenthaler's amendment and we are getting a better rule. It is an emergency rule, hopefully, which JCRAR will accept. If we can hold this in, get through a whole season, have an opportunity to see what happens, and look at it for a permanent rule next year. **Mr. Ela** responded, I think there are problems with parceling out what is two gallons, what is more and what is less, what is broadcast and what isn't broadcast. He called upon Warden Stark to address this. **Warden Randall Stark** responded that the broadcasting issue turns on the detectability or trying to locate the presence of bait for the purposes of enforcing regulations. Another area is public versus private issue where, if a person is hunting on public land, as he understands the way it is written now, it is two gallons for 40 acres, not necessarily two per hunter for 40 acres. It sets up a situation where if two or three people are hunting on public land, how do they know if someone else already has bait out there. And, how do they define 40 acres is also an issue in terms of the traditional 40 square or is it four acres 10 acres long. These kinds of things would need to be worked out with language. That is difficult to be worked out here right now. These are the three major implications they see, from an enforcement standpoint, with it the way it is. Some language needs to be worked out to address some of these concerns. **Mr. Tiefenthaler** responded, it was his intention that on public land it would be one site per hunter on any public land, 40 acres or less. With anyone that owns the land that is less than 40 per site, then it would be two gallons on any over 40 per two sites. That language,

for enforceability will always be pretentious. He didn't think there was any language that they would do that isn't pretentious. Discretion would have to be used. It is the bad actors and the wholesale feeders that are going to be causing the most risk for disease transmissibility.

Mr. Behnke responded that to him it is not a matter if it is two gallons or ten gallons. It is the fact that it is out there. It doesn't make any difference how much you are going to put out there because two gallons is going to attract a number of deer as well as ten gallons. What it is doing is making it difficult and making it a confusion type of situation. As it is now, baiting and feeding will be allowed and why do we want to carry this out further, at this point, at this time. To him, ten gallons is no different then two gallons as far as getting the bait out there or getting the food out there, they both will attract deer. The question is do we want to have anything out there that will bring deer into close contact with one another. What we have now, based on the legislative action, is we will have bait out there. I think that we should have a clean emergency rule as proposed on the green sheet and go with that at this time. As Warden Stark pointed out, there are many problems with enforcement. **Chairman Solberg** stated that we are a few days away from the hunting season and for us to get out new rules would be difficult. People understand the old rules. There is going to be something done whether the Board does it or not and he felt, rather than confusing the issue, he agreed with Mr. Behnke. **Mr. Tiefenthaler** responded, that he totally disagreed with the ten gallons.

Mr. Tiefenthaler MOVED, seconded by Mr. Ela , adoption of Emergency Order WM-37-03(E) - revision of Chapters NR 10 and NR19, Wis. Adm. Code, pertaining to the regulation of deer feeding and baiting in counties considered at highest risk for the spread of chronic wasting disease and bovine tuberculosis, as presented.

Mr. Tiefenthaler stated that whereby in an effort to more severely limit what is now out there by JCRAR, and ten gallons of baiting at an unlimited number of sites potentially would mean increased transmissibility risk, therefore, he amended the rule with an addendum.

Mr. Tiefenthaler MOVED to amend the emergency rule to further restrict it to two gallons per 40 acres, one site per hunter less than 40 acres, only during the hunting season for baiting, that would end on January 3, and have one hunter per site on public land with a manner of which would be to broadcast rather than being dumped in a pile. Mr. O'Brien seconded the amendment.

Chairman Solberg responded that he was going to vote against this at this time because of the confusion issue.

Mr. Behnke stated that to him this is a discriminatory type of a regulation, rule, or law. What Mr. Tiefenthaler is saying that on private land you can only have two bait sites per 40 acres and on public land you can have unlimited number of sites depending upon how many hunters are there. So if there are ten hunters on 40 acres they each get their two gallons. That to him is discriminatory to the tax payers that have their own land and we are saying that we are going to restrict you more than people who hunt on public land. Mr. Behnke stated that he was going to vote against this amendment for this reason. He didn't think it was a fair rule.

Chairman Solberg asked for a roll call vote on the amendment.

<u>AFFIRMATIVE</u>	<u>NEGATIVE</u>	<u>NOT PARTICIPATING</u>
Mr. O'Brien	Mr. Behnke	Mr. Willett
Mr. Tiefenthaler	Mr. Ela	
	Mr. Poulson	
	Chairman Solberg	

The amendment was defeated by a vote of four to two with Mr. Willett not participating.

Chairman Solberg asked for a roll call vote on the main motion.

AFFIRMATIVE

NEGATIVE

NOT PARTICIPATING

**Mr. Behnke
Mr. Ela
Mr. O'Brien
Mr. Poulson
Mr. Tiefenthaler
Chairman Solberg**

Mr. Willett

The order was carried unanimously by those members participating. (Mr. Willett did not participate)

Chairman Solberg commented, as he has said in the past, he is not against game farms, there are some wonderful game farms in the state. However, he hears people talking about baiting, feeding, and game farms. It was spoken again here today at this meeting, TB and the game farms. Chairman Solberg stated that DATCP and the DNR need to do something about the game farms. He wished that the Department staff would speak to the legislature and get something done there because this is the problem. I hear nothing being done on this issue. He respectfully asked that Department staff go to the legislature and ask that they do something on this because he feels that this is the greatest risk that the State of Wisconsin has out there. He would like to stop these animals from escaping and stop these animals from moving around the country. He asked that the State be more restrictive and try and do something to solve this problem.

Mr. Poulson responded that he thought the Board should make that statement in a directive for the Department that the Secretary of DATCP and DNR get together and solve this.

Mr. Poulson MOVED that the Natural Resources Board direct the Secretary of DATCP and the Secretary of DNR begin to solve the problems with game farms. Mr. Tiefenthaler seconded the motion.

Mr. Ela requested that the Board direct the Secretary of the Department of Natural Resources report back to the Board at the September meeting on this issue and at that point the Board could decide what action to take. **Chairman Solberg** responded that time is of the essence. We hear all these comments about baiting and feeding and the real problem is with the game farms. He stated that he feels that they don't have time to waste. **Mr. Poulson** stated that he was not making the statement that he is trying to put the game farms out of business. He further stated that he is making the statement from the standpoint that the Board needs to get on with this so this Board is satisfied with the direction they are taking. **Chairman Solberg** agreed they are not trying to put the game farms out of business. There are good game farms in the State but obviously we have some problems. **Mr. O'Brien** asked that this motion include language that would incorporate that the Secretary report back to the Board of the status, at the September meeting, and that a meeting take place with the DNR and DATCP to see what can be done with this problem.

Mr. Ela requested that the motion be restated.

Mr. Poulson MOVED that the Natural Resources Board direct the Secretary of DATCP and the Secretary of DNR meet to bring together a solution to the problems the Board sees with game farms, how and what action they anticipate, with a report back to the Board at the September meeting.

Chairman Solberg called for the vote on this motion.

The motion was carried unanimously by those members participating. (Mr. Willett did not participate)

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The Meeting adjourned at 10:35 a.m.