

NATURAL RESOURCES BOARD

Minutes

The regular meeting of the Natural Resources Board was held on Tuesday, February 24, 2004, in Room 106 of the State Department of Agriculture, Trade and Consumer Protection Building, Madison, Wisconsin. The meeting was called to order at 1:05 p.m. for action on Items 1, 2, and 3. The meeting adjourned at 4:35 p.m.

PRESENT: Gerald W. O'Brien, Chair
Jonathan Ela, Secretary
Herbert F. Behnke
James E. Tiefenthaler
Stephen D. Willett

ABSENT: Howard D. Poulson, Vice Chair

ORDER OF BUSINESS

1. Minutes to be approved.
- 1.A. Full Board Minutes of January 2004

Mr. Tiefenthaler MOVED, seconded by Mr. Ela, approval of the Full Board Minutes of January 2004, as presented. The motion was carried unanimously by those members present. (Mr. Poulson was absent).

- 1.B. Agenda for February 24 - 25, 2004

Mr. Willett MOVED, seconded by Mr. Behnke, approval of the Agenda for February 24-25, 2004, as presented. The motion was carried unanimously by those members present. (Mr. Poulson was absent).

2. Ratification of acts of the Department Secretary.
- 2.A. Real estate transactions.

Mr. Willett MOVED, seconded by Mr. Behnke, approval of the real estate transactions for February 2004, as presented. The motion was carried unanimously by those members present. (Mr. Poulson was absent).

3. Operating Committees.
- 3.A. Air, Waste and Water/Enforcement Committee.
- 3.A.1. Minutes.

There were no Committee minutes for January 2004 since all agenda items were taken up during the Full Board Meeting.

- 3.A.2. Request for authorization for hearing for revisions to NR 208. Compliance Maintenance Annual Report Requirements for Domestic Wastewater Treatment Works.

Jack Saltes, Wastewater Operations Engineer for Watershed Management Bureau explained the proposed rule revisions to NR 208 including attaining consistency with other wastewater and water quality rules that

have been established since 1992, incorporating collection systems operation and maintenance into annual report, improving the CMAR rating system through a traditional and easily understandable grading system for each section of the report, and improving the quality and ease of reporting through a web-based reporting system (SWAMP).

Mr. Ela asked if the reports, numerical scoring and letter grading be available to the public.

Mr. Saltes replied yes.

Mr. Tiefenthaler MOVED, seconded by Mr. Willett, authorization for hearing for revisions to NR 208, Compliance Maintenance Annual Report Requirements for Domestic Wastewater Treatment Works. The motion was carried unanimously by those members present. (Mr. Poulson was absent).

3.A.3. Adoption of revisions to ch. NR 216, Storm Water Discharge Permits

Russ Rasmussen, Director, Bureau of Watershed Management explained the proposed NR 216 regulations changes that would affect industrial, construction sites, and municipal storm water discharge permits.

Mr. Tiefenthaler asked for clarification on the Milwaukee Shorewood combined sewage information.

Mr. Rasmussen stated that if you are in a Combined Sewer Overflow (CSO), your storm water is going to a treatment system, therefore you do not have to be permitted in that area except areas outside of CSO. The CSO is surrounding urbanized area including downtown Milwaukee and Shorewood according to Federal Law.

Mr. Willett clarified that Mr. Tiefenthaler's point is that the facilities aren't capable of handling it.

Mr. Tiefenthaler asked how we know if the system can handle it if they are not being permitted. He would like to know more about this, why they aren't permitted, and if they should be permitted.

Mr. Rasmussen responded that CSO permit requirements for that area are more restrictive as far as the quality of the water than storm water permit. The permit we are talking about is best management practices for storm water runoff. There is a separate permit for wastewater. The CSO has a higher standard.

Mr. Ela raised the issue of split jurisdiction – Department of Commerce (DOC) and DNR. Which activities are under DOC?

Mr. Rasmussen responded that state law 101.611 gives the DOC authority for erosion control at construction sites for public buildings and places of employment. Basically anything, but one and two family residential. There is also a section in 101 that gives the DOC authority for construction sites of erosion control of one and two family residences. The DNR has given an exemption in 216 for public buildings and places of employment, but not for one and two family residents. They need a permit from the DNR.

Mr. Willett asked since we are the designated agency recognized by the EPA how can the legislature designate a different agency.

Mr. Rasmussen stated that it is handled with a Memorandum of Understanding with DOC recognizing that their rules are equivalent to ours. However, they do not have the personnel to administer program. There is one person who has another full time job.

Mr. Ela asked what if someone would like to build a commercial establishment that employs people, they go to DOC, but there is no one there to offer assistance.

Mr. Rasmussen replied that the person would first come to the DNR as far as site preparation, but once construction has started then it's DOC has jurisdiction. DOC deals with construction site for the erosion

control, but they don't have staff to administer it. They don't have authority for storm water management. That has been an issue between the agencies, how to fill that gap.

Mr. Willett asked if we run the risk of losing our designation if we can't control it. What if there was an MOU with DNR taking over that responsibility? He feels that someone has to do it.

Mr. Rasmussen responded we could, but EPA hasn't played that card. There is no official reaction on that. The DNR taking over the responsibility from DOC is an option.

Mr. Ela encouraged the Department to investigate this option.

Mr. Tiefenthaler asked if someone who has under an acre and would like to build a house. Do they have to apply to water resource and regulations to know if they require a permit? Does the Department have to look at every request on a case by case basis?

Mr. Rasmussen responded that when you are under an acre you don't need a permit.

Mr. Tiefenthaler asked how will Act 118 (Job Creation Act) will affect the permits.

Mr. Rasmussen stated that Act 118 doesn't affect these permits, it affects Chapter 30 permits. The Department is currently working to merge permits.

Mr. Tiefenthaler asked how Department of Transportation is affected by this.

Mr. Rasmussen stated that DOT has a permit similar in scope. They have an exemption to Chapter 30 as long as they work as liaison with DNR and adhere to and follow Trans. 401.

Mr. Willett said we need to find a way to work with Commerce to do something like this.

Public Appearance

Amy Tutweiler – Municipal Environmental Group, Wastewater Division, Madison - an association of 90 communities throughout the state that own and operate wastewater treatment facilities. Paul Kent, who could not attend the meeting, would like the Board to know they support the rule and rule making process. The DNR staff, specifically Russ Rasmussen and Eric Rortvedt, were willing to listen to us and viewed us as partners in developing the rule. This is an ongoing positive experience with the Watershed Management Bureau.

Mr. Behnke MOVED, seconded by Mr. Willett, adopt revisions to ch. NR 216, Storm Water Discharge Permits. The motion was carried unanimously by those members present. (Mr. Poulson was absent)

Mr. Willett added that he concurs with Mr. Tiefenthaler that we are passing a good rule, but don't have the resources to implement it. He has concern for the Department for trying to do this. He suggests the Department needs to figure out allocation of resources to make this a meaningful rule and the whole issue of storm water.

3.A.4. Request for authorization for public hearing to create subch. II of ch. NR 463, ss. NR 463.11 to 463.20 to incorporate National Emission Standards for the Secondary Aluminum Industry.

Bill Baumann, Section Chief, Compliance and Enforcement Section, Bureau of Air Management, requested authorization for public hearing to create subchapter regarding the MACT standard, Maximum Achievable Control Technology. It is a federal requirement. These standards apply to new and existing major and minor sources of hazardous air pollutant emissions that are engaged in the secondary production of aluminum.

Mr. Willett asked if we have the ability to provide the resources to do this.

Mr. Baumann stated that we do have the staff. The 12 large sources already need permits for other reasons. I don't know what additional resources will be needed for small sources.

Mr. Tiefenthaler stated that we don't know the fiscal impact.

Mr. Baumann clarified that there are no additional costs on the federal rule. We don't anticipate needing additional people.

Mr. Ela asked about NR 445, Hazardous Air Pollutants and how does this relate to that rule.

Mr. Baumann stated that NR 445 is for standards that don't go far enough. This is more of a categorical standard and application of technology.

Mr. Ela asked if the number of identified hazardous air pollutants in the federal program is fewer than what the state has identified, but there is an overlap. Is NR 445 is more extensive?

Mr. Baumann stated that yes that was correct.

Mr. Willett MOVED, seconded by Mr. Ela request for authorization for public hearing to create subch. II of ch. NR 463, ss. NR 463.11 to 463.20 to incorporate National Emission Standards for the Secondary Aluminum Industry. The motion was carried unanimously by those members present. (Mr. Poulson was absent)

3.A.5. Adoption of revisions to ch. NR 445, Control of Hazardous Pollutants.

Caroline Garber, Section Chief, Environmental Analysis Section, Bureau of Air Management requested adoptions of three modifications to post revisions to NR 445 and two additional amendments to NR 445.

Mr. Willett asked if the additions were at the request of legislators and asked if we had to go to public hearing.

Ms. Garber stated that the additions were at the request of the legislators and public hearings were not required. The Senate Environment and Natural Resources Committee and the Assembly Natural Resources Committee asked the Department to consider three modifications: adding hazardous air contaminants, treatment of diesel generators, and emissions from agricultural facilities.

Mr. Ela asked if a company wishes to establish a plant that emits one of the 41 substances what's the process for adding the substance to the list.

Ms. Garber stated that the Department can be petitioned to reevaluate the decision to list or not to list a chemical. We could be petitioned to review the analysis and go through rule making process at any time not just if the chemical is present. The 41 chemicals are not listed because they are not present, not because they are not hazardous.

Mr. Ela asked if a company builds a facility that emits a chemical not on the list such as Tamoxifen, will it be grandfathered in and not have to comply.

Ms. Garber stated that the company would have to come into compliance. If the Department knew about it ahead of time, we would work with the companies to help them meet standards. In regards to agricultural emissions, facilities last modified prior to three years are exempt from the requirements in this chapter until 36 months after the effective date of this section and they must achieve compliance within four years.

Mr. Behnke asked if compliance had to be within twelve months after the three years. They have a total of four full years.

Ms. Garber replied yes.

Mr. Ela asked if this language affect the outcome of any ongoing litigation.

Ms. Garber stated that from effective date of rule and for three years they are exempt. The rules aren't adopted at this point and time.

Mr. Willett added that since these rules aren't in effect there isn't any ongoing litigation regarding them.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler adoption of revisions to ch. NR 445, Control of Hazardous Pollutants and the additional amendments. The motion was carried unanimously by those members present. (Mr. Poulson was absent)

Mr. Willett added that he would like to praise the Department on this rule. When it was passed the first time, we held our breath to see if they could fly over the hurdles and you did.

3.A.6. Request for authorization for public hearing on proposed amendments to ch. NR 219 Wastewater Samples for Permit Compliance

David Webb, Section Chief, Environmental Sciences Services, Integrated Science Services Bureau explained that the amendments are to update references in the code.

Mr. Willett asked what are reference updates.

Mr. Webb gave the example is standard methods book is referenced in federal law. The standard methods aren't in NR 219 and all the labs would like to use it.

Mr. Tiefenthaler MOVED, seconded by Mr. Ela request for authorization for public hearing on proposed amendments to ch. NR 219 Wastewater Samples for Permit Compliance The motion was carried unanimously by those members present. (Mr. Poulson was absent)

3.B. Land, Management Recreation and Fisheries/Wildlife Committee.

3.B.1. Minutes.

There were no Committee minutes for January 2004 since all agenda items were taken up during the Full Board Meeting.

3.B.2. Request for authorization for hearing to review proposed Housekeeping Changes to Fisheries Regulations.

Pat Schmalz, Staff Specialist, Fisheries Management and Habitat Protection Bureau, speaking on behalf of Steve Hewett, requested a public hearing for non-controversial housekeeping changes to NR chapters 20, 21, 22, 23, and 26. There are basically 14 changes on rule order including clarifications of rules, definition of a trout stream, updating code references, and misprints.

Mr. Behnke asked about possession limit versus bag limit.

Mr. Schmalz said that the possession limit is still twice the total daily bag limit, but all the rules that apply to bag limits still apply while on the waters.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler request for authorization for hearing to review proposed Housekeeping Changes to Fisheries Regulations. The motion was carried unanimously by those members present. (Mr. Poulson was absent)

3.B.3. Adoption of NRB Order FH-35-03, ch. NR 25, Commercial Fishing – Outlying Waters, Trap Net Markings.

Bill Horns, Great Lakes Fisheries Coordinator, Fisheries Management and Habitat Protection Bureau. This rule applies to Lake Michigan, not Lake Superior. This rule is non-controversial. Due to Act 118, there was an amended order distributed.

Mr. Ela asked if Mr. Horns could clarify changes required under Act 118.

Peter Flaherty, DNR Staff Attorney stated that there were changes to the analysis part of the order. There are additional requirements that the Department must provide including, information on legal authority, impacts on small business.

Mr. Willett asked for clarification on the procedure and if a public hearing was necessary.

Mr. Horns state that public hearing was held already.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler adoption of NRB Order FH-35-03, ch. NR 25, Commercial Fishing – Outlying Waters, Trap Net Markings. The motion was carried unanimously by those members present. (Mr. Poulson was absent)

3.B.4. INFORMATIONAL ITEM - Review of Commercial Fishing Harvest Limits on the Great Lakes.

Bill Horns stated that a couple years ago the Natural Resources Board requested an annual report on Commercial Fishing Harvest Limits on the Great Lakes. He introduced Charles Henriksen, member of the Lake Michigan Commercial Fishing Board and Jeff Bodin, Chairman of Lake Superior Commercial Fishing Board. There is limited number of Commercial Fishing Licenses on each lake. On Lake Michigan there are seventy-seven licenses and if a fisherman gets out of the business and doesn't transfer his license to someone else, the license is lost. On Lake Superior there are ten licenses. That number is consistent.

Mr. Willett asked if we also have Native American fishermen.

Mr. Horns stated yes, those are not included in these statistics.

Mr. Behnke asked if a transfer of license from one party to another, could they charge a fee.

Mr. Horns replied yes.

Mr. Willett added that it is the State's position that there are no property rights with these licenses. The right belongs to the state, not individuals. Does Michigan have property right?

Mr. Flaherty stated he wasn't sure of the final outcome of litigation in Michigan. If a case like that came up in Wisconsin, we don't know what the outcome would be.

Mr. Horns explained the quotas of individual fish species.

Jeff Bodin, Chairman of Lake Superior Commercial Fishing Board added that perch allocation is 50/50. There are more consumers than sportsmen. He also added that we are developing a rule to protect an exotic, Smelt. He recommended Lake Trout quotas be raised. In 1996, eleven of the twenty-one licenses were bought out by the state. This year ten fishermen received seventeen fish per license. State Trout quota is based on twenty-one licenses, but there are only ten of us. Target fish is white fish not trout. His proposal is to increase trout quotas to one hundred fish per license for the next five years. It's important because the tribal agreement is coming up in 2005.

Mr. Ela asked why are white fish more valuable than lake trout.

Mr. Bodin stated it is because of the advisories about consumption.

Mr. Ela asked about allocation between sport and commercial lake trout. Is that part of the tribal agreement?

Mr. Willett stated that the Chippewa have not made claim under the treaty to certain sport fishery and because of that they are giving larger allocations of trout.

Mike Staggs stated there is a connection in the agreement because you must have enough lake trout to fish. We can address the issue in the 2005 agreement.

Mr. Willett said that one of the goals of the 1996 agreement was to grow the fisheries in general. It's my understanding that it has been successful.

Mr. Staggs stated that lake trout on Lake Superior are recovering and growing.

Mr. Bodin said there are enough fish to have 21 quotas, but 11 are put away.

Mr. Ela asked how many days does it take to meet quota.

Mr. Bodin said if you target trout, you can do it in a couple of days.

Mr. O'Brien asked if the Board has anything to do with setting quotas and how often are the agreements?

Mr. Staggs stated that the Department suggests a quota and the Board approves it through the rule making process. The agreements are done every ten years, but there is a five-year adjustment. The next agreement is scheduled for 2005.

Charles Henriksen, member of Lake Michigan Commercial Fishing Board stated they are interested in new modeling and how it works out. However, they are also interested in old modeling. They would like to see a modeling of how many lake trout are in the lake. We are also concerned about Asian Carp caught south of sanitary district. We would like the Department Secretary and the Governor to put pressure on the federal government to help Illinois keep the barrier. He explained that they feel that the sale of quota shares belongs to the commercial fishermen rather than licenses.

Mr. Willett stated that nobody has intentions to take away your allocations and reallocate them. No one will pull licenses unless there is illegal activities.

3.B.5. Adoption of revisions to NR 25, Commercial Fishing – Outlying Waters, Smelt Fishing in Green Bay

Mike Staggs, Bureau Director, Fisheries Management and Habitat Protection Bureau gave the background of the proposed revisions. He stated that at public hearings held in Green Bay there was a fairly overwhelming response that people want Green Bay to go to a zero quota for both commercial and sport. In April 2003, the Department recommended the zero quotas for a period of five years. The Assembly Committee returned the rule, asking that the Board reconsider a 100,000-lb. quota. The DNR biologists feel that a 100,000-lb. quota is an inappropriate number. It was discussed with Representative Bies who said many trawlers felt that if the quota went to zero it would never come back. In October, we came back to the Board with a reduced sunset period of three years and it was approved. At the hearing in November, the assembly asked the Department to reconsider the issues again. The rule presented today is identical to the one in October. He also outlined the proposal given by Representative Bies. The proposal is a three-year quota scale beginning with year 1- 25,000 lbs, year 2 – if the 25,000 lbs quota is reached, quota raised to 50,000 lbs and year 3, if 50,000 quota is reached quota is raised to 75,000 lbs and if it is not reached it stays at year 2 quota. If during the 3-year quota, the harvest, the harvest never attains the 25,000 lbs level, the 25,000-lb shall remain in place for a fourth year. If the 75,000 lbs quota in the third year is met, annual harvest limits returns to 100,000 lbs. Mr. Staggs added that the Department disagrees with this process

because it is a management system that has been a problem in other fisheries. We would like to see the increase before raising the quotas.

Mr. Willett asked if you don't catch then it's similar to non-use. Did we make an adjustment for this? The minimum catch issues.

Mr. Staggs stated that it's not an issue for this fishery. Most fishermen fish multiply species and can meet their overall minimum catch.

Mr. Flaherty added the people who are fishing for smelt are the largest fishermen population on the lake.

Mr. Tiefenthaler asked if the issue is that they are afraid that if we close it down that we will never open it up again. Do we do test trawls on smelt?

Mr. Staggs said that we rely on U.S. Fish and Wildlife Lake Assessment that doesn't go into Green Bay, so last fall we took our trawler into Green Bay, but we only have one year of data. Our adjustment of quotas is based on the fisheries.

Mr. Tiefenthaler stated that we have to know something about the population on Green Bay. He asked the Department to do an ongoing assessment to set up a quota and come back in two months to set up trigger system.

Mr. Staggs suggested three options to the Board. Number one is to set a small quota, number two is to direct DNR to do assessment and number three is to set quota system that has built in triggers. There isn't enough data to set a trigger right now.

Mr. Willett asked Mr. Staggs what he recommendations.

Mr. Staggs recommended setting a modest quota for the next three years.

Mr. Behnke asked what kind of sport fishery there is for smelt. How do they catch them?

Mr. Staggs said sportsmen catch them with nets during spawn. We don't have a good estimate, but we have heard it's spotty.

Mr. Behnke said 50 years ago there was an abundance. Then there were none the next year and then there is an abundance. Their population explodes and varies. Commercial fishermen feel that if they aren't there then they won't catch the fish. Budgetary constraints are not going to allow the Department to do much trawling. I would like to allow a quota of 25,000 lbs. annual quota without the triggers. The Department can review annually to determine to continue or change quotas.

Mr. Staggs stated there has been a steady decline in smelt population. We haven't seen explosions like in the past.

Mr. Behnke asked what is the smelt harvest in Lake Superior.

Mr. Horns stated he thought it's very small.

Mr. Staggs said there isn't a targeted fishery.

Mr. Ela asked about the agreement last spring to avoid discrimination to sport fishermen. Has that happened?

Mr. Staggs said we are waiting to see what happens with this rule.

Mr. Behnke asked how the commercial catch is monitored.

Mr. Staggs said that now it is dockside landings where wardens check quotas. Historically, we did on board monitors. There is a reporting system where fishermen must report what they catch.

Public Appearance

George Meyer, Executive Director, Wisconsin Wildlife Federation said the Federation strongly supports the Department's position to establish a zero quota for smelt on Green Bay until July 1, 2007.

Mr. Tiefenthaler stated that Mr. Staggs just said he felt comfortable with a 25,000 lbs limit. We don't have staff or money to report population.

Mr. Meyer stated quotas should be based on population. Mike didn't say there was a population to support that quota. He suggested giving authority to do a contract assessment with fishermen.

Mr. Ela asked if we maintain a zero quota for commercial fishermen would you support that zero quotas for sport fishing.

Mr. Meyer said yes.

Mr. Ela asked where the rule stands now and what is the quota while the rule is being discussed.

Mr. Staggs stated that the rule is in the hands of the Board. Currently there is no rule while it's being decided and the quota is at 350,000 lbs.

Mr. O'Brien asked what happens if we change the rule and send it back to the committee.

Mr. Staggs stated the committee reviews it and decides what to do with it. If they don't agree, they can send it back to Board.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler to establish a quota of 25,000 lbs to be reviewed in one year and DNR will give the Board results of the quota and what their recommendations would be for the next year.

Further discussion

Mr. Willett asked what will the Board do about sport fishermen.

Mr. Behnke stated he believed that sports fishermen don't amount to any amount of harvest

Mr. Tiefenthaler asked where we come up with 25,000 lbs. Is 10,000 lbs safer? Is it based on any biological data?

Mr. Behnke stated that is the number that has been proposed to Representatives Bies and Lasee.

Mr. Staggs stated 25,000 lbs came from the proposal from Representatives Bies and Lasee. The Department biologists said that would be ok. There is no quantitative basis.

Mr. Tiefenthaler asked if one year realistic. Will one year's data going to make a difference?

Mr. Staggs stated one year isn't going to make much difference. Current data over the past 15 years doesn't show significant changes in the smelt population in one year.

The motion was carried unanimously by those members present. (Mr. Poulson was absent)

3.B.6. **DEFERRED - Request for authorization for hearing to review the Draft Greater Prairie Chicken Management Plan. (Keith Warnke, 20 minutes)**

3.B.7. Land acquisition and donation - Statewide Habitat Areas, Green Lake County.

Mr. Willett MOVED, seconded by Mr. Tiefenthaler approve purchase and donation of Statewide Habitat Areas, Green Lake County. The motion was carried unanimously by those members present. (Mr. Poulson was absent)

3.B.8. Easement acquisition - Ice Age Trail, Dane County.

Mr. Behnke asked how Dane County acquired the land.

Richard Steffes stated that Dane County bought it from a private landowner.

Douglas Haag stated that Dane County bought the land from a father/son farming operation. The lots were selling very quickly, so Dane County bought as quickly as they could and then let all the funding partners catch up.

Mr. Willett asked if we do the deal, can we tie the funds. Can they use the money for general-purpose revenue?

Mr. Haag said no we would buy the easement from Dane County. They have \$800,000 invested in these two deals. County money will be used for other land purchases.

Mr. Willett asked why should we buy from a municipality under normal circumstances, so we should restrict how they spend the money.

Mr. Haag stated one of the reasons Dane County comes to the Department is because there are complications with the state funding that has been approved for the purchase of the Ice Age Trail. The Department is the only one who can spend money on stewardship. I think the County would be comfortable with the restriction on the fund usage.

Mr. Tiefenthaler asked why are we buying an easement.

Mr. Haag stated that if we don't protect this land it will be developed residentially.

Mr. Willett asked why should County tell us what to do.

Mr. O'Brien asked did we have any agreement in advance.

Mr. Haag stated that we worked with them from the beginning knowing that we had federal and state funding to help cost share for the Ice Age Trail. The County understands risk. They have options. They could sell the land for residential properties.

Mr. O'Brien stated the County isn't making money on transaction. Let's work together.

Mr. Ela stated we had the same discussion in Florence County. It's not that they are trying to get rid of land. It's in the best interest for everyone to protect the land.

Mr. Ela MOVED, seconded by Mr. Behnke approve easement acquisition for Ice Age Trail in Dane County. The motion was carried 4-1 with Mr. Tiefenthaler being opposed. (Mr. Poulson was absent)

3.B.9. Land acquisition, boundary modification and donation - Chippewa Moraine State Recreation Area, Chippewa County.

Mr. Willett MOVED, seconded by Mr. Tiefenthaler approve purchase, boundary modification and donation - Chippewa Moraine State Recreation Area, Chippewa County. The motion was carried unanimously by those members present. (Mr. Poulson was absent)

3.B.10. Easement acquisition and boundary modification - Rice Beds Creek Wildlife Area, Polk County.

Mr. Behnke MOVED, seconded by Mr. Willett approve purchase of easement and boundary modification - Rice Beds Creek Wildlife Area, Polk County

Mr. Ela asked what are conditions of easement.

Mr. Steffes stated that it is a habitat restoration easement with no public access.

The motion was carried unanimously by those members present. (Mr. Poulson was absent)

3.B.11. Land acquisition - White River State Trail, Racine County.

Mr. Willett asked if this acquisition is under federal clause.

Mr. Steffes stated he didn't think so. We will look at railroad records.

Mr. Tiefenthaler MOVED, seconded by Mr. Behnke approve purchase of White River State Trail, Racine County. The motion was carried unanimously by those members present. (Mr. Poulson was absent)

3.B.12. Land acquisition - Baraboo Hills Recreation Area, Sauk County.

Mr. Willett MOVED, seconded by Mr. Tiefenthaler approve purchase of Baraboo Hills Recreation Area, Sauk County.

Mr. Ela asked what is the inholding.

Mr. Steffes stated that it is a tower.

The motion was carried unanimously by those members present. (Mr. Poulson was absent)

3.B.13. Land acquisition - Statewide Fishery Remnant Areas, Iowa and Grant Counties.

Mr. Ela asked what is a fishery remnant area.

Mr. Steffes stated it was set up in the 1960s look for spawning and springs for trout fishing.

Mr. Tiefenthaler MOVED, seconded by Mr. Ela land acquisition - Statewide Fishery Remnant Areas, Iowa and Grant Counties. The motion was carried unanimously by those members present. (Mr. Poulson was absent)

3.B.14. Easement acquisition - Baraboo Hills Recreation Area, Sauk County.

Mr. Willett MOVED, seconded by Mr. Ela easement acquisition - Baraboo Hills Recreation Area, Sauk County. The motion was carried unanimously by those members present. (Mr. Poulson was absent)

3.B.15. Land acquisition and donation - Crex Meadows Wildlife Area, Burnett County.

Mr. Behnke asked what SJE Corporation is.

Mr. Steffes stated it was a family business.

Mr. Ela asked since Governor Knowles State Forest is in close proximity to Crex Meadows is there a plan to create wildlife corridor.

Mr. Behnke said he made a motion several years ago to make all this a wildlife corridor. He directed the Department to find this motion and revive it.

Mr. Behnke MOVED, seconded by Mr. Ela land acquisition and donation - Crex Meadows Wildlife Area, Burnett County. The motion was carried unanimously by those members present. (Mr. Poulson was absent)

3.B.16. Land acquisition and resale authorization - Mead State Wildlife Area, Marathon County.

Mr. Willett MOVED, seconded by Mr. Tiefenthaler land acquisition and resale authorization - Mead State Wildlife Area, Marathon County.

Mr. Ela asked what is the nature of the house and what about a leasing option. The Park Service does it and works well.

Mr. Steffes said the house was in decent shape and I think we can sell it. It is a judgment call and we are trying to maximize state dollars. We don't want it to get worse by fifteen more houses being built. The leasing business is an option, but not the best one. There isn't public access to this property because it's a refuge. The residents won't be able to hunt.

The motion was carried unanimously by those members present. (Mr. Poulson was absent)

3.B.17. Land Acquisition - Lower Wisconsin State Riverway, Crawford County.

Mr. Willett MOVED, seconded by Mr. Ela land acquisition - Lower Wisconsin State Riverway, Crawford County. The motion was carried unanimously by those members present. (Mr. Poulson was absent)

3.B.18. Land acquisition, boundary modification and donation - Mud Lake Wildlife Area, Columbia County.

Mr. Ela MOVED, seconded by Mr. Willett land acquisition, boundary modification and donation - Mud Lake Wildlife Area, Columbia County. The motion was carried unanimously by those members present. (Mr. Poulson was absent)

3.B.19. Land donation and establishment of Jefferson Marsh State Wildlife and Natural Area, Jefferson County.

Mr. Tiefenthaler MOVED, seconded by Mr. Ela land donation and establishment of Jefferson Marsh State Wildlife and Natural Area, Jefferson County.

Mr. Ela asked about the inholdings.

Mr. Steffes stated it is private property and would be a target for the state to acquire. The DNR has leased those inholdings for public hunting for the past thirty years.

The motion was carried unanimously by those members present. (Mr. Poulson was absent)

Mr. Ela complimented the Department about diversity of land acquisitions.

Mr. Behnke complimented Mr. Steffes on the improvement of maps for this meeting. He recommended the Department studies the Crex Meadow and Governor Knowles Forest and come back to the Board with a recommendation.

The meeting was adjourned at 4:35 p.m.

The regular meeting of the Natural Resources Board was held on Wednesday, February 25, 2004, in Room 106 of the State Department of Agriculture, Trade and Consumer Protection Building, Madison, Wisconsin. The meeting was called to order at 8:39 a.m. for action on Items 4, 5, 6, and 7. The meeting adjourned at 1:07 p.m.

4. Committee of the Whole.

4.A. Citizen Participation.

Greg Kazmierski – Wisconsin Deer Hunters Coalition, Waukesha, presented his views on the proposed T-Zone and Earn-A-Buck regulations. He urges Board to allow hunters to get out and kill the deer. He proposed returning to regular nine-day gun season, regular archery season and seven-dollar bonus tags.

4.B. Retirement Resolutions.

4.B.1. James M. Radtke

4.B.2. James Shipman

4.B.3. Norman H. Pratt

4.B.4. Thomas P. Marquardt

4.B.5. Gary Lund

Mr. Behnke MOVED, seconded by Mr. Willett approval retirement resolutions. The motion was carried unanimously by those members present. (Mr. Poulson was absent)

4.C. Chronic Wasting Disease Update and Request for authorization for hearing for rule order WM-08-04, pertaining to the 2004 CWD Hunting Zones and Rules.

Tom Hauge, Director, Bureau of Wildlife Management stated that in 2003 over 300 CWD-infected deer were detected in the state. It is concentrated in certain locations in Southern Wisconsin. There have been seven CWD positive in Rock County and two in Walworth County and one in Kenosha County. Illinois has 47 positive deer to date in the Rockford area. The Department is using helicopters in the disease area to count the deer. Due to lack of snow cover, the survey isn't yet completed. CWD Incentive Program seems to be a success and will be reviewed over the next couple of months.

Mr. Tiefenthaler asked if there are any game farms in the Rockford area.

Mr. Hauge stated yes, there are three to four hundred elk and deer farms in Illinois. He doesn't know exactly where, the numbers of animals, or their regulations.

Mr. Ela asked how much of a reduction in the herd has occurred in the past two years.

Mr. Hauge stated that the Department hasn't completed the winter surveillance study yet. Hopefully in April when we come back before the Board, we will have that information.

Mr. O'Brien asked what the result is if the Senate does or does not pass the baiting and feeding rule.

Mr. Hauge said if they do pass it – the Department will come back before the Board with a rule. The bill provides for a two-gallon limit.

Tim Andryk DNR Attorney stated two things happen if they don't pass it. The rule would expire on June 30, 2004 and the statewide baiting ban rule would go into effect. There would be unregulated feeding statewide including CWD zone.

Mr. Ela asked why we would revert to the statewide ban.

Mr. Andryk stated we passed a permanent rule banning baiting and feeding statewide. The legislature suspended that rule. They introduced legislation to uphold that suspension. If the legislation fails, the baiting portion of the rule goes into effect because DNR authority to regulate feeding ends in June 2004. If legislation fails, the emergency rule stays in effect until April 30th. We are asking for a sixty-day extension that ends in June 2004.

Mr. O'Brien asked if the rule about baiting is a statewide ban and if there were any other rules proposed.

Mr. Andryk stated that there are a number of bills proposed, but the emphasis is on AB519 and that is the one that they are trying to pass. It is the two-gallon limit on feeding statewide except counties in CWD zones. This bill is consistent with our emergency rule.

Mr. Tiefenthaler asked about soil update in regards to CWD.

Mr. Hauge stated that's all he knows right now. There isn't anything new or any strong links. It's research about how long the prion persists in the soil. Dr. Nancy Matthews is trapping and radio collaring deer in the CWD zone. She captured 30-40 deer already this year.

Mr. Tiefenthaler asked about tonsil testing procedure and the Department's position on using that method of testing.

Mr. Hauge stated there is an experimental tonsil testing procedure where they must sedate animal, cut out chunks of tonsils. It's dependent on if they get enough of lymphoid molecules out of the tonsil gland to do test. The USDA does not recognize it because it is not known how accurate the test is.

Mr. Behnke asked about blood work testing and DNA testing.

Mr. Hauge stated he receives an e-mail every other month announcing of companies being on the verge of test. He hasn't heard any DNA based testing. Even with the blood tests they are only detecting changes in blood. The companies are not driven by CWD because there isn't the money in it. It's BSE that is driving the companies to develop testing.

Mr. Willett asked if a link between Mad Cow Disease and CWD has been found.

Mr. Hauge stated no, the research shows that transmission isn't linked.

Mr. Behnke asked if the private company that sold test kits through Gander Mountain were still in business.

Mr. Hauge stated no they are not in business.

Mr. Willett asked what stage are we at with CWD. Are we at the extremely concerned stage or can we tell the public to continue their activities without concern?

Mr. Hauge stated there is nothing that he has learned in the last two years that makes him feel any easier about this disease. There are test models out there that provide different results and most show a significant decline in positives and most show a decrease in CWD. Given all clear FDA and human health issues it is very unlikely. The necessity to test more animals as the disease spreads drains the resource. He is still as concerned today as he was two years ago.

Mr. Willett asked about states like Texas and Pennsylvania that have large deer populations and if they are spending money to test animals.

Mr. Hauge stated that last year was a wake up call for most states and are moving towards testing. They may be on a different program. Pennsylvania has been testing animals.

Mr. Willett asked if we are participating in federal rule making process. Are there public hearings? We should encourage that our regulations be implemented nationwide. We should testify because it will benefit industry, resource, and people of Wisconsin.

Mr. Hauge stated the rule has just been proposed and the comment period ending this week. The rule will not be in effect for at least a year. Wisconsin regulations are the model for regulations. Secretary Hassett and DATCP Secretary Nilsestuen have been very involved in that process.

Mr. Tiefenthaler asked how confident the Department is about where the disease is located.

Mr. Hauge stated he feels good that the line on the map is accurate. There can be outliers beyond the lines, but it takes a lot of samples to find those outliers. I am less confident in Southeast Wisconsin than South-central Wisconsin. We are sampling statewide. The goal was 90% accuracy for detecting CWD. We tested 450-500 deer out of each county. It's not an all clear signal for those northern counties. It is not a one-time test. It must be ongoing.

Mr. Tiefenthaler asked if the Department is testing right outside game farms.

Mr. Hauge stated that in Portage and Walworth Counties were tested because of positive game farm testing. Escapes are common, but we aren't chasing them.

Mr. Behnke stated he feels strongly that wildlife disease control goes much deeper and broader than DNR problem. We are draining wildlife resources. We are putting too much money into this. Where can we get money to pay for this? We need legislation to provide necessary funding. This becomes the highest priority for legislation. We can not afford to continue to use hunting and fishing dollars to fund CWD.

Mr. Hauge stated that wildlife disease control is a perfect example of a program that isn't done just for hunting and fishing. CWD can overwhelm a program.

Mr. Tiefenthaler stated the Board should direct the Secretary to come back in May for a license fee increase and to lay out what wildlife has spent since CWD was discovered.

Mr. Willett stated the captive wildlife issue DATCP, DNR, USFWS, and USDA need to recognize that this a common problem. It should be a joint approach between four agencies. Interest groups – agriculture, hunters, consumers, etc. He suggests we look to expand our partners and then come up with a strategy. There isn't enough money in the State of Wisconsin to fund CWD. It's not just the DNR's problem. We need to formulate a strategy to address the issue between the partners.

Mr. Behnke stated he agrees that we need to broaden partnerships. In the interim, we are draining DNR wildlife funding for CWD. We should not accept the legislator ignoring the costs.

Bill Vander Zouwen, Section Chief, Wildlife and Landscape Ecology, Bureau of Wildlife Management discussed the 2004 CWD Hunting Zones and Rules. One proposed change is that the eradication zone will equal the intensive harvest zone to eliminate confusion. Other changes include mandatory sampling at registration stations, landowner permits of 5 acres or more, state park archery season ending on January 3rd, charge a minimal fee for CWD landowner permits.

Mr. Ela asked what is being done in Kenosha County.

Mr. Vander Zouwen stated that there is only one positive that was a yearling male who possibly just dispersed there. We are doing surveillance, giving permits to landowners. We are gathering data to see if it will be a possible eradication zone next season.

Steven Oestreicher Chairman, Wisconsin Conservation Congress, gave a conservation congress update about deer management units. Unit 73D, Grant County has been at or below goal for past five of years. It is slated for T-zone this year. In 2003, there were two thousand fewer permits issued and now it's in T-Zone. Two other concerns are unit 4 (Douglas County) and 29A (part of Iron, Price, Ashland County). Conservation congress has expressed concerns to the Board based on low over winter goals that they would be T-Zone units, and now are Earn-a-Buck units. We have expressed concerns for three years about these units. Deer management units were established in the 1950s. The makeup of units have changed over the past 50 years. It's time to change the units and divide them or reconfiguration can be an option. The Department will not like changing the units because there will not be data on those new units. In response to Board's proposed question on a longer deer season. There was an article written in the local paper that stated it was amazing how the conservation congress supported the 23-day deer hunt when they didn't support it last year. The only reason they supported it was because it eliminates earn-a-buck. The executive counsel of congress supported earn-a-buck as a last resort. The 23-day hunt was opposed because there was no citizen input. The congress supports the Board's proposal to take this issue out for public hearing.

Mr. Tiefenthaler challenged Mr. Oestreicher to work with the conservation congress to identify on the map the proposed deer management zone and present it to the Board. T-zone stands for Temporary zones and he is concerned they are turning into Permanent zone. We should start a discussion at the congress level.

Mr. Ela MOVED, seconded by Mr. Willett approve request for authorization for hearing for rule order WM-08-04, pertaining to the 2004 CWD Hunting Zones and Rules as amended, with updated map for zone. The motion was carried unanimously by those members present. (Mr. Poulson was absent)

4.D. INFORMATIONAL ITEM - Schemes to replace earn-a-buck directed by the Board at the January meeting.

Mr. Vander Zouwen worked with wildlife management, legal, law enforcement and licensing to develop possible options for outfitters in Buffalo County. The guides in that area anticipate that earn-a-buck regulations will greatly reduce the number of clients, affect landowner leases, and impact local economy. Buffalo County is 156% over their deer management goal. It has been in Zone T for four years. There were 120 local people at the herd status meeting and they do not want exemptions for guides.

Mr. Willett asked what was local people's reaction about the herd population. Do they thing the herd is too large? There is a pride of large bucks being shot in that unit. They want to keep their deer population up and healthy to continue producing trophy deer.

Mr. Vander Zouwen stated the opinion was split about herd goal. They took it upon themselves to take a vote at the meeting on what the goal should be. Thirty-two people voted to raise goal and thirty-six voted against it.

Mr. Tiefenthaler challenged the number of outfitters as being between seven and eight. I talked to the outfitter who says there are 20-25 outfitters.

Mr. Vander Zouwen listed the options: drop earn-a-buck, raise population goals in Unit 61, exempt guides and clients, owe-a-doe, transfer buck hunting authority, nuisance permits, outfitter's license, trophy tags, advance earn-a-buck (carry it over from one season to the next). All the options reduce herd control, the rest of the state will want similar treatment, inequity of treatment of hunters, complexity issues. The Department recommends earn-a-buck regulations continue to apply to Buffalo County for herd-control purposes and treat all hunters equally in this requirement.

Mr. Tiefenthaler asked Mr. Vander Zouwen to answer the original question specifically for Buffalo County, private land, and private outfitters.

Mr. Vander Zouwen asked how do we know who is a bonafide outfitter.

Mr. Tiefenthaler stated he should call them.

Mr. O'Brien asked why apply it just to Buffalo County.

Mr. Willett stated it should be statewide.

Mr. Tiefenthaler stated the goal is to reduce herd.

Mr. O'Brien asked how do you prevent everyone from buying guide licenses.

Mr. Willett stated that you don't. Open it to the public at large not just the guides.

~~4.E. Adoption of Emergency Order FH ___04(E) revising Chapters NR 1, 2, 320, 323, 325, 326, and 328, creating Chapters NR 310, 311, 312, 321, 329, 341, 343, and 345, and repealing Chapter NR 322, pertaining to implementation of 2003 Wisconsin Act 118 which went into effect on February 6, 2004." (Mike Staggs, 1 hour)~~

DEFERRED FROM THE AGENDA

5. Board Members' Matters.

Mr. Behnke proposed a change for 2006 hunting season for migratory season. He has drafted a letter to the U.S. Fish and Wildlife Service. The letter calls for a one time variance to its policy with regards to the frequency that a state can alter its zone boundaries in order to permit the North/South zone boundary to be amended in time for the 2004 duck hunting in the State of Wisconsin. He will be proposing this for Board action in March. He is delaying Board action because he would like input from the waterfowl committee at this weekend's seminar.

Mr. Willett stated that the snowmobile industry has contacted him about the noise regulation. The Department is proposing to come with us in March with a rule regarding noise. There will be testing at Michigan Tech. to determine the impact between 82 decibels and 88 decibels. The industry thinks they can come in full compliance at 88 decibels, but not 82 decibels. The Department should wait to bring the rule until the May meeting. The Department should have scientific evidence to support their proposed rule.

Mr. Tiefenthaler stated that in October he asked about wetland maintenance report, how many applications and how many had been granted. Mike Staggs got back to him stating the forms haven't been written, there is a short form on the table right now. Mr. Tiefenthaler is disappointed that this hasn't happened. He said the Secretary needs to follow this process. He asked how many wolves is enough. He received memo from Signe Holtz. There will be an adoption brought to the Board in March. He would also like an answer from Wildlife Management about the early bow harvest. It was said to be 57,706. On February 13, it was reported there were 84,000 deer harvested.

Mr. Hauge stated the first number was a preliminary number. It is an issue of data entry. The data hadn't been entered yet.

6. Special Committees' Reports

~~EXECUTIVE SESSION - the Natural Resources Board will meet in closed session under the authority of s.19.85(1)(e) Wisconsin Statutes, for the purpose of deliberating or negotiating the purchase of public properties.~~

ADDITON TO THE AGENDA

7. Department Secretary's Matters.

7.A. DONATION - \$6,000 for the entire Otter Aerial Study by the Wisconsin Trapper's Association.

Tom Hauge, Director, Wildlife Bureau presented a plaque to John Irwin, President of the Wisconsin Trapper's Association and thanked them for their generous donation.

John Irwin thanked the Natural Resources Board and the DNR for support and working together for the privilege of providing the funding for the Otter Survey. They look forward to continuing their support of the DNR.

Mr. Tiefenthaler MOVED, seconded by Mr. Willett approved donation from Wisconsin Trapper's Association. The motion was carried unanimously by those members present. (Mr. Poulson was absent)

- 7.B. DONATION- \$5,000 for the Douglas County turkey translocation project by the Gitchee Gumme Chapter of the National Wild Turkey Federation.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler approved donation from the Gitchee Gumme Chapter of the National Wild Turkey Federation. The motion was carried unanimously by those members present. (Mr. Poulson was absent)

- 7.C. DONATION - \$5,333 for the release of turkeys in the Northern Region of Wisconsin by the Snowbelt Longbeards Chapter of the Wild Turkey Federation.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler approved donation from Snowbelt Longbeards Chapter of the Wild Turkey Federation. The motion was carried unanimously by those members present. (Mr. Poulson was absent)

- 7.D. DONATION - \$5,380 for the purchase of fire equipment to be used in prescribed burns and to provide support for timber stand improvements in Rock and Green County by the Blackhawk Toms Chapter of the National Wild Turkey Federation.

Mr. Behnke MOVED, seconded by Mr. Willett approved donation from Blackhawk Toms Chapter of the National Wild Turkey Federation. The motion was carried unanimously by those members present. (Mr. Poulson was absent)

- 7.E. RECOGNITION- Department Employees and consultants involved in evaluating the proposed Crandon Mine Project.

Al Shea, Division Administrator, Air and Waste individually recognized – Bill Tans, Archie Wilson, Melissa DeVetter, Larry Lynch, Chris Carlson, Chuck Hammer, Bob Grefe, Shannon Fenner, Dave Siebert, Ken Markart, Dave Johnson, Paul Luebke, John Roth, Dale Simon, Bob Young, Dale Lang, Steve Ohm, Cathy Cleland, Bill Jaeger, Terry McKnight, and Steve AveLallemant for their hard work and dedication on the Crandon Mine Project.

Mr. Behnke MOVED, seconded by Mr. Tiefenthaler approved recognition of Department employees and consultants involved in evaluating the proposed Crandon Mine Project. The motion was carried unanimously by those members present. (Mr. Poulson was absent)

Mr. Behnke stated he appreciates the good work with these people did without conflict and publicity. The Department staff exhibited professionalism

Addition to agenda

INFORMATIONAL ITEM - Notice of Deficiency by USEPA to the State of Wisconsin in regards to air quality program.

Al Shea stated a notice of deficiency was issued due to a petition by Sierra Club and Midwest Environmental Advocates that was sent to the EPA in December of 2002. There are five areas focused on by the petition with these three being the key issues: adequacy of funding, management of funds, and rate of issuance of federal operating permits. These issues were addressed between the time of the petition in 2002 and the present time.

Mr. Ela asked if the rule is a drain on the air program.

Mr. Shea stated the air program like all programs in the DNR is feeling the effect of the budget. We haven't built an information technology system to issue permits. It's very much still a paper system. This needs to be done due to funding, staffing problems.

Mr. Willett stated he would like Department in its response to say they have always monitored quality of work. At no time has the resources not been protected. He commends the Department, Secretary, and Governor for the attention to this issue. He does not agree with the EPA threatening to take back the program because they couldn't come close to do what we have done.

Chairman O'Brien requested a motion to go into Executive Session at 11:54 a.m.

Mr. Ela MOVED, that the Board convene into Executive Session under the authority of s.19.85(1)(e) Wisconsin Statutes, for the purpose of deliberating or negotiating the purchase of public properties. Mr. Willett seconded the motion. The motion was carried by a roll call vote by those members present.

The Executive Session ended at 1:06 p.m. There was no action was taken during session.

The meeting adjourned at 1:07 p.m.