

## NATURAL RESOURCES BOARD

### MINUTES

The Natural Resources Board met via teleconference at 9:00 a.m. on Tuesday, September 5, 2006, in Room 774B of the State Natural Resources Building (GEF 2), Madison, for action on Item 1.

Gerald O'Brien (Stevens Point)     Dan Poulson (Palmyra)  
Chris Thomas (Stevens Point)     Steve Willett (Phillips)  
Jonathan Ela (Madison)     John Welter (Eau Claire)  
Dave Clausen (N. Minnesota)

#### **Order of Business**

1. Reconsideration in response to the August 22, 2006 action of the legislative committee regarding the adoption of Board Order DG-37-02, revisions to NR 140, related to ground water quality standards.

**Dr. Thomas** stated that when the NRB last discussed this item, she voted to add the standard and said that most people in Wisconsin would say that they didn't want any Alachlor in their wells. She recently discovered that there is Alachlor in the Whiting Municipal Well which is located a quarter mile from her house. She is assuming that she has Alachlor in her private well also. She is satisfied with the standards that were set at the last meeting. However if Monsanto wants to fund an independent study that will not be controlled by them we should set the standard, conduct a peer review process subsequently, and modify the standard, if need be, later.

**Michael Lemcke**, Section Chief, Groundwater Management, Drinking Water and Groundwater Bureau stated that in a letter dated August 23, 2006 (corrected August 28, 2006) the Wisconsin Joint Committee for the Review of Administrative Rules has requested that the Department modify Board Order DG-37-02 (revisions to NR 140 groundwater quality standards). The Committee has requested that the Department modify Board Order DG-37-02 to eliminate the proposed groundwater quality standard for alachlor ethane sulfonic acid (alachlor-ESA) and commence an external, independent, and unbiased scientific review of that proposed standard.

Alachlor-ESA is a degradate breakdown product of the herbicide, alachlor, that has been found in 28 % of private drinking water supply wells statewide. Following the statutory process, a health risk based groundwater quality standard for alachlor-ESA was developed by the Department of Health and Family Services (DHFS). Wisconsin ch. 160, Stats., requires that the Department propose groundwater standard recommendations developed by DHFS as state groundwater quality standards in ch. NR 140, Wis. Adm. Code.

The Department has consulted with DHFS regarding the need for an external scientific review of groundwater quality standard developed for alachlor-ESA. DHFS staff have completed an extensive multi-year review of the toxicologic information available for alachlor-ESA. Based on this review, and following the scientific methodology specified in Wisconsin ch. 160, Stats., DHFS developed a recommended groundwater quality enforcement standard for alachlor-ESA. DHFS does not believe that an external review of the proposed groundwater quality standard for alachlor-ESA is necessary. The Department concurs with DHFS and recommends that DG-37-02 not be modified.

**Dr. Henry Anderson**, Department of Health and Family Services stated that since 1983 we have followed the same review process for 130 chemicals. The rats who were fed this in their drinking water suffered from anemia. It is the same route of concern as our well water today. We followed the same rules and regulations for this chemical as we have for previous chemicals.

**Mr. Lemcke** stated that Laurie Bowman from Department of Agriculture, Trade, and Consumer Protection is available for any other questions the NRB may have. If we want to start having a peer review, it needs to be set up in the statute so that it is consistent for every chemical.

**Mr. O'Brien** stated that the Agriculture Committee stated that there were different tests done and the numbers were different.

**Dr. Anderson** stated that DHFS never did any testing of our own. All of the studies that were used were the ones done by Monsanto. There were two studies done that exposed rats through two different routes for 90 days. There isn't a long term study. Those were the two studies available. We used the study that follows the statutes that provided the lowest observed affect level which is the occurrence of anemia in rats. We used the study where the rats were fed the chemical in the water rather than in the diet. The rats weren't

as sensitive to the chemical when it was fed through their diet rather than their water. We used the study that was most sensitive. Monsanto is not proposing to do a new study, but rather to do a review of the selection process and get outside people to use the state statutes. It's more of an audit to DHFS's approach. Monsanto argues that anemia is not a serious enough affect to base the standard on.

**Mr. Poulson** asked if the only test results we have are those done by Monsanto and not done by DHFS.

**Dr. Anderson** stated that is correct.

**Mr. Poulson** asked why we need to go any further if Monsanto's science is good.

**Mr. Willett** stated because the legislature has asked us to and we are to implement the laws and meet the requests of the elected officials.

**Mr. Ela** stated that we are in a rule review process where each institution has its allotted role. We should stick to our role without second guessing the wishes of other people.

**Mr. Ela MOVED, seconded by Mr. Clausen to affirm the adoption of Board Order DG-37-02, revisions to NR 140, related to ground water quality standards.**

**Mr. Welter** asked what will happen over at the legislature if we do affirm the adoption.

**Amber Meyer-Smith**, Legislative Liaison stated there are a couple of things at play with the affirmative motion. Because this is a rule that began the process in 2002, it has a 4 year shelf life, so no matter what happens this rule is dead as of December 31, 2006. The way that the motion from JCRAR was structured, they asked us to remove thealachlor ESA standard from the rule so even if the NRB says yes to a peer review and then it happened before December, JCRAR would then have to come back and reverse their action and implement thealachlor ESA standard. The odds of it happening are extremely unlikely.

**Dr. Thomas** asked why we are fighting about this then.

**Ms. Meyer-Smith** stated that if the NRB decides to affirm the rule and not agree to a peer review JCRAR must introduce a bill in the next session that will say the DNR cannot set a standard foralachlor ESA. The bill could sit untouched the entire legislative session which would prevent the DNR from starting the rule process until June of 2008.

**Mr. Clausen** asked if there are people with their wells contaminated above the 20 parts per billion and that as long as there is no standard there is no financial help for those people to redo their wells or to obtain safe drinking water.

**Ms. Meyer-Smith** stated yes.

**Mr. Ela** asked what will happen if we accede to the legislature's request.

**Ms. Meyer-Smith** stated she isn't sure. It depends on how the bill is structured.

**Dr. Thomas** asked what's wrong with affirming the standard and allowing a peer review process to take place.

**Mr. Lemcke** stated that option has been taken away by JCRAR.

**Mr. Ela** stated that if there is a peer review it should be structured by the Department, not by Monsanto.

**Mr. O'Brien** suggested allowing the peer review on the NRB's terms and have that available to get the rule passed.

**Mr. Poulson** asked if the NRB is acting from an emergency rule that was passed in 1992.

**Mr. Lemcke** stated that what the DNR functions under now is a health advisory level that was set in either 1992 or 1993.

**Mr. Poulson** asked why the NRB can't pass an emergency rule on this.

**Mr. Lemcke** stated that a health advisory level is a request from any agency to DHFS to establish a number.

**Todd Ambs**, Administrator, Division of Water clarified that if the NRB adopts the standard as is, but then asks for a peer review that is Monsanto funded but the study is set up by the DNR. That avenue would affirm what the Department and NRB has done up until now.

**Dr. Thomas** stated that this approach would be more acceptable to JCRAR than the NRB just saying no. Since JCRAR met, wells over the level have been discovered.

**Ms. Meyer-Smith** stated that a member of JCRAR offered an amendment to set the standard then have a peer review. It was rejected by the committee. So if the NRB sends that back, it would automatically be rejected unless the NRB does exactly what they ask.

**Dr. Thomas** asked even though new information has been brought forward.

**Ms. Meyer-Smith** stated that those new well identifications were presented at the hearing. The response was that 21 was only one over 20.

**Mr. Willett** stated he doesn't think JCRAR will automatically reject the NRB's suggestion. If we don't try to work with them, it's asking for no rule at all.

**Mr. Ela** stated that's probably where it will end up in any event.

**Mr. Willett** stated that he doesn't agree with that. If we take Dr. Thomas' position cooler heads will prevail.

**Mr. Ela** stated that he would be willing to vote for a DNR structured peer review with a rule in place, but it sounds like that is already an option that JCRAR has rejected. He asked the NRB to act on the existing motion and then have a second motion to request the Department to conduct a peer review.

**Mr. O'Brien** stated he thinks that it should be one motion.

**Dr. Thomas MOVED, seconded by Mr. Poulson to amend the original motion to reconfirm the earlier standard, but DNR and DHFS are to conduct and implement a structured peer review without any controlling influence by an outside party.**

**Mr. Willett** stated that all scholarly articles that are published in journals are required to be peer reviewed. There are already standards for peer reviews in place.

**Dr. Thomas** stated that the editor of the journal selects who peer reviews the articles published in journals. There are politics involved in it. The structure of how the peer review is conducted could be worked out later.

**Mr. Lemcke** asked if this would be done for every chemical in the future.

**Mr. Willett** stated that this is a discussion between NRB members.

**Mr. Ela** asked if the Department is required to do the peer review if the committee rejects the motion.

**Mr. Willett** stated that if the peer review confirms the quality of the rule, the answer is yes.

**Mr. Ela** suggested that the peer review is a political artifact and it should be treated that way.

**Mr. O'Brien** stated that this is an attempt to get this rule in place. Mr. Ela is suggesting sending the rule back as is and we know what will happen if we do that. With the peer review, we are taking a shot that maybe the rule would go through.

**Mr. Ela** asked Ms. Meyer-Smith to lay out a scenario in which this rule will be in place within the next two years.

**Ms. Meyer-Smith** stated there are two possible scenarios. The committee has said that we need to respond by 5:00 pm today and agree to what they want or they object. They didn't give any indication that they are going to come back on this. She isn't sure when the review period ends. There is a 30 day review period from when they called the hearing. But she isn't certain when that deadline is. There would be noalachlor provision in the rule. The DNR could come back with an emergency rule. A very unlikely solution is to do a peer review within 4 months and go to the legislature with the peer review and they convene and reverse their action of August to include the Alachlor provision in the rule.

**Mr. Poulson** called the motion to question.

**A roll call vote was taken on the amendment.**

**Christine Thomas – Yes**

**John Welter – Yes**

**Dave Clausen – Yes**

**Dan Poulson – Yes**

**Gerald O'Brien – Yes**

**Steve Willett – Yes**

**Jonathan Ela – No**

**The motion carried 6-1.**

**A roll call vote was taken on the original motion**

**Christine Thomas – Yes**

**John Welter – Yes**

**Dave Clausen – Yes**

**Dan Poulson – Yes**

**Gerald O'Brien – Yes**

**Steve Willett – Yes**

**Jonathan Ela – Yes**

**The motion carried as amended 7-0**

**Mr. Ela** asked for clarification that if this motion rejected, as he assumes it will be, the Department is not required to conduct a peer review in the abstract foralachlor-ESA.

There was no objection to Mr. Ela's clarification.

\*\*\*The meeting adjourned at 9:49 a.m.\*\*\*