

## NATURAL RESOURCES BOARD

### MINUTES

The regular meeting of the Natural Resources Board was held on Wednesday, October 25, 2006 in Room 511, State Natural Resources Building (GEF 2), Madison, Wisconsin and via teleconference. The meeting was called to order at 8:30 a.m. for action on items 1-7. The meeting adjourned at 11:00 a.m.

#### ORDER OF BUSINESS

1. Organizational Matters

1.A. Calling the roll

Gerald O'Brien – present                      Dan Poulson – present in Palmarya via telephone, left at 10:00 a.m.  
Jonathan Ela – present                      Dave Clausen - present  
John Welter – present                      Christine Thomas – present in Stevens Point via telephone  
Steve Willett – present in Phillips via telephone

1.B. Approval of minutes from September 27, 2006

**Mr. Ela MOVED, seconded by Mr. Clausen approval of the minutes from September 27, 2006. The motion carried unanimously by all members.**

1.C. Approval of agenda for October 25, 2006

**Mr. Ela MOVED, seconded by Mr. Welter approval of the agenda for October 25, 2006. The motion carried unanimously by all members.**

2. Ratification of Acts of the Department Secretary

2.A. Real Estate Transactions

**Richard Steffes**, Real Estate Director requested that a Governor Knowles State Forest item to the real estate transactions.

**Mr. Clausen MOVED, seconded by Mr. Welter approval of the real estate transactions including the Governor Knowles Item. The motion carried unanimously by all members.**

3. Action Items

3.A. Air, Waste, and Water/Enforcement

3.A.1. Adoption of Board order AM-08-06, revisions to NR 406 and NR 410 implementing s. 285.60(5m), Stats., relating to Construction Permit Waiver Requests from Air Contaminant Sources

**Jeff Hanson**, Section Chief, Permits and Stationary Source Modeling, Air Management Bureau stated that the Natural Resources Board authorized public hearings on the proposed rule at the May 2006 meeting. Two hearings were held in August 2006. Section 285.60(5m), Stats. (as created by 2003 Wisconsin Act 118) requires the Department, by rule, to allow sources who file an air pollution control construction permit application to request a construction permit waiver under certain circumstances. Construction permit waivers would allow a facility to start on-site preparation, including, but not limited to, site clearing, grading, dredging or landfilling prior to receiving a construction permit when necessary to avoid undue hardship. The Department must act on the waiver request within 15 days of receipt of the request. There is a \$300 non-refundable fee associated with filing a waiver request

**Mr. Ela** asked about under what circumstances this would take effect.

**Mr. Hanson** stated that most of them are weather related, other reasons include equipment failure.

**Mr. Ela** asked about the protected class one area.

**Mr. Hanson** state that they are federally protected areas such as Indian reservations, national forest.

**Mr. O'Brien** asked about how many waivers they expect.

**Mr. Hanson** stated that they are estimating about 10 per year.

**Mr. Ela** asked if it is done at the applicant's risk.

**Mr. Hanson** stated yes. We reserve the right to rescind the waiver.

**Mr. O'Brien** asked what the definition of diligent is.

**Mr. Hanson** stated we didn't want to limit the scope.

**Public Appearance**

1. **Scott Manly**, Madison, Wisconsin Manufacturers and Commerce, stated that the waiver criterion is difficult to prove. The hardship is something that's hard to prove. In the comments the WMC submitted, they requested that they reexamine what the legislature passed and change the rules to reflect the department's authority to grant these waivers on a case by case basis without having to prove undue hardship.

**Mr. Welter** asked if he has reviewed the waiver requests over the past year and were any of them a hardship to the applicant.

**Mr. Manly** stated he has discussed them with Tom Steidel. He isn't familiar with the specific cases. Unless there is a weather or disaster you can't get a waiver so people don't bother trying.

**Mr. O'Brien** asked what are some other examples of reasons for waivers.

**Mr. Manly** stated there are ethanol consultants who state there is a huge demand for ethanol. Whoever gets ethanol production on the market the fastest is going to be the one who cashes in. They ask how can we build a plant the fastest. They need a construction waiver permit. The waiver doesn't allow any air pollution to be emitted.

**Mr. O'Brien** asked how long it takes to get a construction permit.

**Mr. Hanson** stated the average is 3-4 months from the initial application which includes a 30 day comment period.

**Mr. Ela** asked if you can get a construction waiver simply by asking, why have a construction permit in the first place.

**Mr. Manly** stated we want to create jobs and we are asking the Department to use discretion for reasons other than weather and disasters.

**Mr. Ela** asked for examples of other criteria.

**Mr. Manly** stated economic development.

**Mr. O'Brien** stated he can agree with economic development. The Department would still have the opportunity to decide on a case by case basis. Our state is in a bad economic state and Mr. Manly's request will allow for more economic development.

**Mr. Clausen** asked if this would impact the state implementation plan under EPA.

**Mr. Hanson** stated that yes it would.

**Mr. Ela** asked how this relates to the general and registration permits.

**Mr. Hanson** stated that it doesn't.

**Mr. Manly** stated that these construction permits are for minor sources. In other states many of these wouldn't need construction permits.

**Mr. Ela MOVED, seconded by Mr. Welter adoption of Board order AM-08-06, revisions to NR 406 and NR 410 implementing s. 285.60(5m), Stats., relating to Construction Permit Waiver Requests from Air Contaminant Sources.**

**Mr. O'Brien MOVED, seconded by Mr. Willett to amend to include a case by case review beyond hardship.**

**Mr. Welter** stated that the proposed range of criteria in the rule are sufficient for granting the waiver.

**Mr. O'Brien** stated that the first one is precluded all together.

**Mr. Ela** asked why have construction permits if a waiver will be issued just by asking for one.

**Mr. Willett** stated that would be at the peril of the applicant. Construction permits have value.

**Kevin Kessler**, Director, Bureau of Air Management, stated that we need criteria for waivers that need to be unusual.

**Mr. O'Brien** asked Mr. Manly what would be the criteria

**Mr. Manly** stated economic development to keep a manufacturer in Wisconsin.

**Mr. Ela** asked for an example of a facility that would not create economic development.

**Mr. Manly** stated he didn't know. The definition must be a unique hardship, not just unique.

**Mr. Welter** stated that he has experience on a zoning board. The request for variances had a variety of description of hardships. At time it was economic. He thinks there will be a great deal of creative on the

part of the applicant to prove hardship. He suggested adopting this rule without the amendment. Review our experience in a year or two and then change it if necessary at a later date.

**A roll call vote was taken.**

**Mr. Clausen – No      Mr. Ela – No      Mr. Welter – No      Mr. Willett – Yes**  
**Mr. Poulson – Yes      Dr. Thomas – No      Mr. O’Brien – Yes**

**The amendment failed 3-4**

**The original motion carried unanimously by all members.**

3.A.2. Request authorization to hold public hearings for Board Order DG-37-06, revisions to NR 820 pertaining to groundwater quantity protection.

**Mark Putra**, Section Chief, Private Water Supply stated that the 2003 Wisconsin Act 310, enacted in April 2004, expands the Department's authority over high capacity wells to include consideration of impacts to certain sensitive water resources, requires annual reporting of groundwater pumping from high capacity wells and directs the department to designate two groundwater management areas. The proposed rule implements the provisions of 2003 Wisconsin Act 310.

Under the proposed code, all owners of high capacity wells will be required to submit annual pumping reports to the department. The rule also establishes the area extent of two groundwater management areas one in the southeast part of the state and another in the northeast part of the state. The two areas include the entire area of each city, village and town in which the level of the underlying groundwater has dropped by at least 150 feet as a result of groundwater pumping.

Proposed Ch. NR 820 establishes processes and criteria to guide the review of proposed high capacity wells near springs, trout streams, outstanding resource waters (ORW) and exceptional resource waters (ERW). The rule includes screening criteria that will be used to determine the necessary level of environmental review for wells that are proposed to be located near springs or within a groundwater protection area (within 1,200 feet of a trout stream, ORW or ERW). Applicants for wells near springs or in groundwater protection areas will be required to submit information to demonstrate that the proposed well will not result in significant adverse environmental impacts to the surface water resource. When it is determined that a proposed well could result in a significant adverse environmental impact, the applicant may be required to submit an environmental impact report and the department will prepare an environmental assessment prior to approving or denying the proposed well.

**Mr. Welter** asked if the new reporting will pertain to all high capacity wells in the state.

**Mr. Putra** stated yes.

**Mr. O'Brien** asked if it includes irrigation wells.

**Mr. Putra** stated yes the hurdle is 100,000 gallons a day and irrigation wells pump around 1 million gallons per day.

**Mr. Welter MOVED, seconded by Mr. Clausen approval of request authorization to hold public hearings for Board Order DG-37-06, revisions to NR 820 pertaining to groundwater quantity protection.**

**Mr. Welter** stated this rule is a step in the right direction to manage groundwater. It will help gather information for future recommendations.

**The motion carried unanimously by all members.**

3.A.3. Request authorization to hold public hearing for Board Order WT-36-06, creation of NR328, Subchapter III - Shore Erosion Control Structures in Navigable Waters

**Mary Ellen Vollbrecht**, Section Chief, Rivers and Habitat Protection, Watershed Management Bureau stated that the purpose of the proposed subchapter III in NR328 is to create additional general permits to streamline the review of applications for erosion control structures. The proposed subchapter establishes design, construction and location standards for bank erosion control structures placed in rivers and streams under general permits. General permits for biostabilization and integrated bank treatment meeting Natural Resources Conservation Service (NRCS) technical standards would be available throughout the predominantly agricultural and urban ecoregions of Wisconsin (where flooding is generally frequent and

more severe, eroding banks deliver sediment loads that often impair habitat and water quality, and adjacent land uses frequently limit the area available for natural channel movement). A threshold level of bank erosion potential is required for sites to be eligible for the integrated bank treatment general permit so that rock armoring is avoided in areas where aquatic habitat is very good and could be harmed by such treatment. The rule establishes a standard map for identifying ecoregions and urban areas as well as a method for determining bank erosion potential.

Landowners in agricultural and urban areas, including those seeking to restore stream habitat and water quality, will benefit from a streamlined permit process, reduced fee and clear, easy-to-apply standards. Anglers, boaters, tourists and others who use and enjoy Wisconsin's rivers and streams will benefit from a system that encourages protection of the healthy aquatic habitat and natural scenic beauty of their waters. This rule replaces and improves upon emergency orders that have been in place for similar general permits during the 2005 and 2006 construction seasons. Controversy with the emergency orders has been limited.

**Mr. O'Brien** asked the difference between the two different permits.

**Ms. Vollbrecht** stated that biostabilization issue of biological materials and bank treatment is using rocks.

**Mr. Poulson** asked how it relates to the buffer issue.

**Ms. Vollbrecht** stated it's mostly in the water and doesn't go beyond the banks.

**Mr. Welter** asked about existing riprap maintenance.

**Ms. Vollbrecht** stated that there are good records and should qualify for a general permit.

**Mr. Ela MOVED, seconded by Mr. Clausen approval of request authorization to hold public hearing for Board Order WT-36-06, creation of NR328, Subchapter III - Shore Erosion Control Structures in Navigable Waters. The motion carried unanimously by all members.**

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

3.B.1. Adoption of Board Order WM-51-04, revisions to NR 12, NR 16, and NR 17 relating to hound training

Tom Hauge, This rule order establishes rules for training hunting dogs to pursue captive rabbits, foxes and coyotes within large acreage training enclosures. The rule also provides regulations for the use of captive bobcat, bear and raccoon in a more controlled environment which ensures human safety, safety of the captive animal, and prevents the opportunity for the unintentional escape of the captive wild animals into the wild.

In September 2006, the Natural Resources Board indicated support for WM-51-04 with the following amendments:

- 1) Exempt the Peck puppy training enclosure from the minimum 15-acre size requirement.
- 2) Provide for a maximum of 16 hours of training in a 24-hour period for captive coyotes and fox.
- 3) Remove the 1-foot distance requirement when training with raccoons in roll cages.
- 4) Require that any surgical modification (tail docking) of captive coyotes and fox be done by a veterinarian.
- 5) Require hound dog training enclosures to provide the department documentation that they have a veterinarian of record.
- 6) Correct fencing mesh size language to indicate that the mesh size must be 2 inches square.
- 7) Do not require owners of coyote and fox training enclosures to meet new perimeter fencing standards until they are replacing their existing fence.

The attached rule order has been modified to incorporate the above amendments.

The Board also directed the department to provide the board with a report on how these rules are working after 3 years of implementation.

**Mr. Clausen MOVED, seconded by Mr. Willett adoption of Board Order WM-51-04, revisions to NR 12, NR 16, and NR 17 relating to hound training. The motion carried unanimously by all members. Mr. Poulson was absent.**

3.B.2. Land Acquisition, Statewide Public Access, Kenosha County.

**Mr. Welter MOVED, seconded by Mr. Ela approval of Land Acquisition, Statewide Public Access, Kenosha County. The motion carried unanimously by all members present. Mr. Poulson was absent.**

3.B.3. Land Acquisition and Project Boundary Modification, Peter Helland Wildlife Area, Columbia County

**Mr. Willett MOVED, seconded by Mr. Ela approval of Land Acquisition, but not the Project Boundary Modification, Peter Helland Wildlife Area, Columbia County. The motion carried unanimously by all members present. Mr. Poulson was absent.**

3.B.4. Land Acquisition and Donation, High Cliff State Park, Calumet County

**Mr. Welter MOVED, seconded by Mr. Clausen approval of Land Acquisition and Donation, High Cliff State Park, Calumet County. The motion carried unanimously by all members present. Mr. Poulson was absent.**

3.B.5. Land Acquisition and Project Boundary Modification, Trout Creek Fishery Area, Iowa County.

**Dr. Thomas MOVED, seconded by Mr. Welter approval of Land Acquisition and Project Boundary Modification, Trout Creek Fishery Area, Iowa County. The motion carried unanimously by all members present. Mr. Poulson was absent.**

3.B.6. Land Acquisition, Rib Mountain State Park, Marathon County.

**Mr. Ela MOVED, seconded by Dr. Thomas approval of Land Acquisition, Rib Mountain State Park, Marathon County. The motion carried unanimously by all members present. Mr. Poulson was absent.**

3.B.7. Land Donation, Chippewa River State Recreational Trail, Eau Claire County

**Mr. Welter MOVED, seconded by Mr. Ela approval of Land Donation, Chippewa River State Recreational Trail, Eau Claire County. The motion carried unanimously by all members present. Mr. Poulson was absent.**

4. Citizen Participation 10:30 a.m. 9:30 a.m.

4.A. Public Appearances

1. **Greg Kazmierski**, Pewaukee, Deer Hunters Coalition stated that he has concerns about the SAK timetable and the canceling of that agenda item. He reviewed the timeline of the meeting. He is concerned that the release of this report may have intentionally been delayed because of the 9 day gun season or the election. He is concerned something is tried to be hidden. He asked the NRB to take charge and empower the committee to release the report.

**Dr. Thomas** stated that the NRB is in charge of the process. She was contacted two months ago by Ms. Osterndorf about how the NRB would like to handle the report. We decided that we would like everyone to receive the report at the same time. She didn't know the report wasn't going to be ready. The meeting wasn't canceled because of the deer season or the election. The Department wanted it out before the deer season. We were unable to get the presenter from out of state scheduled for this meeting.

**Mr. Hauge** stated we are trying schedule it for Tuesday, December 5<sup>th</sup> in the afternoon.

2. **Patricia Randolph**, Portage, RAVEN stated that she is a former Dane County Conservation Congress delegate. She stated that the NRB continues to cater to the hunting lobby while many species are threatened by extinction. She stated that two years ago at the Dane County spring hearings, the feral cat issue was taken out of order in an effort to get non-hunters to go away before the election. She questioned the voting process and stated that it is intimidating for non-hunters. She asked the NRB to form a committee of non-hunting citizens to help re-design the process to be fair, inclusive and democratic.

**Mr. Welter** asked when she was a Dane County Delegate was it part of her responsibility to count the votes.

**Ms. Randolph** stated no, that she didn't know enough about the process.

5. Board Members' Matters

**Mr. Clausen** stated that a new report found that CWD is transferred through salvia. He thinks the NRB has a responsibility to readdress baiting and feeding. He asked the staff to provide recommendations in December or January.

**Mr. O'Brien** asked about wetland mitigations in regards to Menards and Ashley Furniture issue. He asked for a report and staff presentation on how the mitigation for private businesses is working.

**Todd Ambs**, Administrator, Water Division gave an over view of the Menards and Ashley issue and will give a further report at a future meeting.

6. Special Committees' Reports

7. Department Secretary's Matters

**Secretary Hassett** discussed the CWD memo. Yesterday, I sent all of you a memo discussing an important Chronic Wasting Disease work item that I believe we must undertake in 2007. I'd like to just highlight a few key points. Wisconsin is in its 5th year of responding to CWD. We've come a long way since the gut wrenching discovery of CWD in 2002. We were not handed a roadmap for disease control when they told us we had CWD-infected deer. From day one, our department reached out for help from national and home grown experts within DATCP, Health & Family Services, the University of Wisconsin, USDA, the National Wildlife Health Center, and many other places to start building a roadmap using the best available science as our guide

Five years later, I'm impressed by how far Wisconsin has come and what we've accomplished.

Specifically, I'm proud that:

- No other state or province has better data on where CWD is located or how common the disease is in those areas.
- No other state or province has better data on hunter and landowner thoughts and attitudes regarding CWD.
- We've built state of the art testing systems from scratch and annually lead the continent in the number of hunter-killed deer tested.
- Deer aren't being dumped because of fear or freezer space anymore; they are being kept or put into the food pantry system. Education and testing has rebuilt hunter confidence.
- Deer farms are implementing regular health testing and captive herds with CWD are being eliminated.
- Wisconsin research is steadily adding to our knowledge of the disease, its mechanisms of spread, where prions are found within infected deer, and Wisconsin deer movements. All this research is building more informed models of how CWD will progress within Wisconsin.

There is much to be proud of in Wisconsin's initial phase of CWD management. But, we must also ask ourselves two things: one – are the measures we've implemented indeed controlling CWD? And two, what should Wisconsin's second phase of CWD management look like?

I've asked our staff to take stock of where we are and where we need to go. Their assessment is sobering. We need a serious dialog with the public in order to chart our course for the future. We are armed with much better data, but the challenge before us is just as large as it was in 2002.

Our 5 years of surveillance data has found CWD-infected deer in a geographically large area of southern Wisconsin with "sparks" of infection out ahead of the core disease areas. Wildlife health experts are telling us these sparks need to be snuffed out or they will turn into additional core infection areas. We are encouraged that the intensity of infection has not shown the predicted increase in the "core" of Southwest Wisconsin, but reduced antlerless harvests in 2005 and a slow start this fall could wipe out any control we have achieved.

Wisconsin has serious decisions to make as we plan the next phase of CWD management. Our department must provide the leadership needed to make informed choices. I've asked my staff to prepare a plan to reach out to the citizens of Wisconsin as we develop the second phase of CWD management. I hope we'll have that plan ready for your consideration in February, 2007. The choices we make and the actions we take now will affect the next generation in Wisconsin. We believe it is critically important to begin the public dialogue on those CWD management choices as soon as possible.

From a social science view, multiple studies show that the great majority of Wisconsinites do not want CWD to spread. We've also learned through surveys and on the ground results, that the capacity of hunting

to control CWD is directly tied to the willingness of hunters and landowners. Even with a variety of incentives and liberal seasons, the desire to see this disease controlled is not well matched by hunters and landowners' action on the lands where this disease exists. This disparity needs to be discussed and dealt with in Wisconsin's next phase of CWD management.

**Mr. Clausen** stated that his baiting and feeding concerns will be addressed as part of this plan.

**Dr. Thomas** stated anything that causes saliva transfer is problematic and it seems that all baiting and feeding should be banned.

7.A. Retirement Resolutions

7.A.1. Betty Les

7.A.2. Dorothy A. Krieger

7.A.3. Jean Rygiel

7.A.4. Richard C. Wolff

**Mr. Welter MOVED, seconded by Mr. Clausen approval of the Retirement Resolutions. The motion carried unanimously by all members present. Mr. Poulson was absent.**

7.B. Donations

7.B.1. Willow River State Park's Organization for Wildlife Learning (OWLS) will donate \$16,000 to be used for the salary of the limited term volunteer coordinator and a work study position.

**Mr. Ela MOVED, seconded by Mr. Welter approval of the \$16,000 donation from Willow River State Park's Organization for Wildlife Learning. The motion carried unanimously by all members present. Mr. Poulson was absent.**

7.B.2. Lake Koshkonong Recreation Association will donate \$12,000 to be used for the operation of the Bark River Hatchery and fishery enhancements on Lake Koshkonong. ADDED TO AGENDA

**Mr. Welter MOVED, seconded by Mr. Clausen approval of the \$12,000 donation from Lake Koshkonong Recreation Association. The motion carried unanimously by all members present. Mr. Poulson was absent.**

8. Information Items

8.A. Air, Waste, and Water/Enforcement

None

8.B. Land Management, Recreation, and Fisheries/Wildlife

8.B.1. ~~Summary of the 2005-2010 Wisconsin Statewide Comprehensive Outdoor Recreation Plan (SCORP) (Jeff Prey and Peter Biermeier, 30 minutes)~~ **DELETED FROM AGENDA**

8.B.2. Butler Garter Snake Update

**Signe Holtz**, Director, Endangered Resources Bureau stated the Department is managing the snake based on science. Chairman O'Brien requested more information regarding the Joint Committee for the Review of Administrative Rules actions and the Department's response to them. Last month, the Joint Committee met on July 18 and on Sept. 27 and voted both times to suspend the listing of the BGS as a state-threatened species, this last time with a date of November 30.

At the October committee meeting the Dept. heard about new issues that the committee now saw as important including responding to the needs of the "little guy."

- We have reallocated funding and hired a LTE to work exclusively on Butler's review work in addition to the reallocation of work over the last two years done by the incidental take coordinator and the cold-blooded species expert.
- We have pursued a commitment from an outside scientific group that specializes in conservation of rare species and resolution of the social and economic issues—incorporate the new data and information and revising the Conservation Strategy with all stakeholders involved. We will be using the federal funding called State Wildlife Grants to fund this.

- We have continued our work to involve stakeholders and will be communicating with them in the next two weeks.
- I have reallocated another person funded by Endangered Resources Seg Account to coordinate all of this work.
- We are pursuing funding for a person to do proactive conservation work, especially with land trusts and public landowners.
- We have secured university interns to support the science work.
- We are planning more training sessions for consultants in concert with the development community.

Given the support that we received in September from the development community and the conservation community to support our proposed timeline of having a revised conservation strategy by the beginning of the next building season, it was very disappointing that the committee ignored this and gave us only until November 30 to “update(s) its conservation strategy so that its policy relating to the Butler’s garter snake is less burdensome on the private property owner.” We are also very concerned that the committee continues to threaten delisting when we’ve been working with stakeholders and scientists to revise the conservation strategy and make it less burdensome on landowners at the same time it is based on good science. We will not make a decision to reduce the number of sites or other revisions to the Conservation Strategy unless that decision is based on good science.

The meeting adjourned at 11:00 a.m.