

NATURAL RESOURCES BOARD

MINUTES

A special meeting of the Natural Resources Board was held on Monday, September 10, 2007 in Room 511, State Natural Resources Building (GEF 2), Madison, Wisconsin. The meeting was called to order at noon for action on item 1. The meeting adjourned at 12:10 p.m.

ORDER OF BUSINESS

Organizational Matters

Calling the roll

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| David Clausen – present | Dan Poulson – present |
| Jonathan Ela – absent | Gerald O'Brien – present |
| John Welter – present | Christine Thomas – present |
| Jane Wiley - absent | |

1. Adoption of Emergency Order AM-38-07(E), and hearing authorization on proposed rules affecting ch NR 462 pertaining to the National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial and Institutional Boilers and Process Heaters in ch. NR 462, Wisconsin Administrative Code.

Al Shea, Administrator, Air and Waste Management Division stated that The federal National Emission Standard for Hazardous Air Pollutants for Industrial, Commercial and Institutional Boilers and Process Heaters (Boiler MACT) was promulgated by the USEPA on September 13, 2004, with a compliance date set for September 13, 2007. Shortly after promulgation, four environmental organizations filed a lawsuit that challenged the methodology USEPA used to set the emission standards and the standards themselves. In June of 2007, the D.C. Circuit Court of Appeals ruled in favor of the environmental organizations and announced its intent to vacate the Boiler MACT. On July 30, 2007, the Court issued its mandate vacating the Boiler MACT. The compliance date for existing sources under the now vacated federal rule is no longer valid at the federal level. However, since DNR promulgated a similar standard in ch. NR 462 as required by s. 285.27(2)(a), Stats., the compliance deadline of September 13, 2007 remains in Wisconsin's rules.

The Department is proposing an emergency rule amendment as well as hearing authorization on an identical rule amendment to stay implementation of ch. NR 462. As described in the background memorandum, the issues here are complex. There is no specific national guidance yet from USEPA on the expected next steps following the federal court vacatur.

The Board last acted on ch. NR 462 when the rule was adopted in May 2006, as required under s. 285.27(2)(a), Wis. Stats.

Mr. Welter asked if this was a Court of Appeals published decision on appeal of a District Court decision.

Mr. Shea stated correct.

Mr. Welter asked whether the District Court issued a decision that had any immediate impact on the rule or for some reason things did not become operative until the Court of Appeals decision was published.

Mr. Shea stated that if he understands your question correctly, it is the former and Attorney Tom Steidl has nodded in his assent so it was the former of your two premises.

Mr. Welter stated he assumed that the permanent rule that we are sending out for public hearing is the same rule as we are adopting as an emergency rule today.

Mr. Shea stated that is correct.

Dr. Clausen stated there are provisions in the Clean Air Act for what is called the MACT Hammer. EPA has not issued guidelines for that. Is this how you would go about enforcing this on an individual basis?

Mr. Shea stated that is correct. He noted though that Wisconsin is going to take the same position as other states. Until the U.S. EPA publishes some guidance on how to proceed with that, we are

not going to take any actions at all under the MACT Hammer. Mr. Kessler who is our Air Bureau Director has been in contact with other states and national organizations while that particular issue is sorted out.

Dr. Clausen asked if we have any idea how long it will be before those guidelines are issued.

Mr. Shea stated he did not know. He thought a lot sooner than this federal rule in general will be sorted out. EPA usually does not move very fast. He would be speculating.

Mr. O'Brien stated he has the statute in front of him. It says "if the standards of performance for new statutory sources for emission standards for hazardous air contaminants under the Federal Clean Air Act are relaxed, the Department shall alter the corresponding state standards." He did not see that the Board has any alternative under our own Wisconsin statutes but that we have to comply with that statute. It does justify an emergency rule since the rule goes into effect September 1 and if we do not it does justify the application of the emergency procedure in order to make this necessary correction.

Mr. O'Brien MOVED, seconded by Mr. Poulson approval of the request for Adoption of Emergency Order AM-38-07(E), and hearing authorization on proposed rules affecting ch NR 462 pertaining to the National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial and Institutional Boilers and Process Heaters in ch. NR 462, Wisconsin Administrative Code.

Dr. Thomas asked for further discussion.

Dr. Clausen asked how many total companies in Wisconsin would be affected by this rule.

Mr. Shea stated his understanding is that in total, there are 59 companies but only 7 companies that have any reference to this in their permits. The Department has been working with Wisconsin industries since either late winter or early spring on this matter knowing that there was a court decision going to be made. We have not had an opportunity, frankly, to do a wholesale inclusion of the federal requirements into state requirements which in this case actually helps us out.

Dr. Thomas asked whether this action will relax standards for the 52 businesses or industries where compliance is not specifically tied to the federal rule.

Mr. Shea stated that with a case by case MACT Hammer, while there may be a delay in figuring out what that is, he thought that gives the Department a very strong backstop in terms of the environmental impacts.

The motion carried unanimously.

Dr. Thomas adjourned the meeting.

The meeting adjourned at 12:10 p.m.