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NATURAL RESOURCES BOARD

MINUTES

The regular meeting of the Natural Resources Board was held on Wednesday, June 22, 2011 at the Stone Harbor Resort and Conference Center, Sturgeon Bay, WI. The meeting was called to order at 8:30 a.m. for action on items 1-7. The meeting adjourned at 2:21 p.m.

ORDER OF BUSINESS

1. Organizational Matters
- 1.A. Calling the roll

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| William Bruins – present | Preston Cole – present |
| Christine Thomas – present | Jane Wiley – present |
| Terry Hilgenberg – present | David Clausen – present |
| Greg Kazmierski – present | |
- 1.B. Approval of agenda for June 22, 2011

Ms. Wiley MOVED approval, seconded by Dr. Thomas. The motion carried unanimously.

Dr. Clausen thanked northeast region staff for the super tours and presentations on Tuesday. Staff did a great job highlighting interesting projects and the Sturgeon Bay area.

2. Ratification of Acts of the Department Secretary
- 2.A. Real Estate Transactions

Mr. Cole MOVED approval, seconded by Mr. Kazmierski. The motion carried unanimously.

3. Action Items
- 3.A. Air, Waste, and Water/Enforcement
- 3.A.1 Presentation of the Great Lakes Legal Foundation's (GLLF) petition for rulemaking to repeal the state's secondary 24-hour ambient air quality standard for particulate matter measured as total suspended particulates (TSP) and request for adoption of Board Order AM-23-07B, proposed rules affecting chs. NR 404 and 484, Wis. Adm. Code, pertaining to repeal of the state's secondary 24-hour ambient air quality standard for particulate matter measured as TSP

John H. Melby, Jr., Air Management Bureau Director, stated that the Department and the Board received a petition for rulemaking from the Great Lakes Legal Foundation on September 15, 2010. The petition requests the repeal of the state's secondary 24-hour ambient air quality standard for particulate matter measured as TSP (s. NR 404.04 (3), Wis. Adm. Code). The petitioners' request for rulemaking for repeal of the TSP standard is primarily based on ss. 285.21 (1) (a) and (4), Wis. Stats. These statutes state that the Department may not issue air quality standards more restrictive than federal air quality standards unless there is a finding and written documentation by the Department justifying the need in order to protect public health and welfare. He addressed key issues raised in public comments, including silica (frac) sand and public welfare concerns. In response to the GLLF petition, the Department is requesting adoption of AM-23-07B to repeal the TSP standard.

Public Appearances:

1. **Robert Fassbender**, Middleton, representing Wisconsin Manufacturers & Commerce spoke in support of the proposed rule. He is an attorney for the Great lakes Legal Foundation (GLLF). GLLF is focused on regulatory matters from a business perspective. He distributed and discussed a memo dated March 9, 2011 from WI Legislative Council which responds to a request for analysis of whether s. NR 404.04 (3) Wis. Adm. Code, relating to the establishment of a secondary standard for TSP, conflicts with s. 285.21, Stats., relating to the adoption of ambient air quality standards that are similar to federal standards. **(Handout)**

Discussion followed on whether repealing the TSP standard will make this rule more consistent with federal law, whether the TSP standard provides a numerical guide for fugitive dust standard, whether the repeal of TSP will affect potential compliance in protecting national parks from aesthetic issues associated with particulates such as at Apostle Islands National Lakeshore, examples of industry that have been regulated against under TSP that will not be regulated by the Department as a result of this rule, whether any citations were issued in the past five years as a result of TSP issues, whether repeal of the TSP standard will free-up staff to concentrate on PM 2.5, whether TSP is more of a public welfare than health issue, whether local municipalities can adopt ordinances at a local level to restrict fugitive dust, environmental justice concerns related to adverse health affects from TSP on certain populations who have limited resources, options on regulating fugitive dust for local governments and citizens, and DC/ATSDR EJ Definition – environmental justice (PowerPoint slide).

Cathy Stepp, Department Secretary, stated her appreciation for the discussion on TSP and environmental justice issues. As head of the Department, she needs to make sure everything they are doing is in compliance with state law. The legislature has called the Department to task for that by suspending the rule temporarily and are now being told by Legislative Council that the Department is still not in compliance.

Dr. Thomas MOVED approval, seconded by Ms. Wiley.

Discussion continued on whether regulations on PM10 and PM 2.5 emissions from ethanol plants will be waived, whether new businesses will find PM2.5 and PM10 confusing, why a municipality would not do something to regulate fugitive dust, whether Clean Air Wisconsin has taken a stand on this rule, and whether the Department could draft a model ordinance to address public welfare issues for use by local governments.

Dr. Thomas MOVED, seconded by Ms. Wiley for an amendment to request that the Department work with stakeholders to develop a voluntary model ordinance for use by local governments to address welfare problems associated with particulate matter (PM) greater than PM 10.

Discussion continued on whether a model ordinance drafted by the Department would have unintended consequences, and whether use of the draft ordinance would be voluntary.

Marney Hoefler, Staff Attorney, stated that the model ordinance would only be a framework for municipalities to use.

Discussion followed on concerns on how the model ordinance would be processed at the local level, whether WI Manufacturers and Commerce would be interested in assisting the Department in the development of a model ordinance, whether the model ordinance could be flexible enough to accommodate many issues, whether the Department could help advice local municipalities, and whether a local ordinance can be more restrictive than federal law.

Mr. Bruins called the question. The motion to amend passed on a roll call vote of 4-3.

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|-------------------------------|----------------------------|
| William Bruins – No | Preston Cole – Yes |
| Christine Thomas – Yes | Jane Wiley – Yes |
| Terry Hilgenberg – No | David Clausen – Yes |

Greg Kazmierski – No

The original motion as amended carried unanimously.

3.A.2 Request authorization of public hearings for Board Order AM-11-10, proposed rules affecting NR 406, 407, and 445 pertaining to the exemption of emissions from animal agricultural waste, and the solicitation of economic impact information from entities that may be affected by the proposed rule

Bart Sponseller, Air Monitoring Section Chief, briefed the Board on the background of the proposed changes including general information, reason for rule delay, and Fenceline Study. He then gave an overview of the proposed rule changes, which are consistent with JCRAR suspension. He then outlined the Department’s next steps with the rule modification process. The Department’s goal is to develop informational and outreach decision-making tools that encourage voluntary use of BMP’s. He requested the Board authorize public hearings for Board Order AM-11-10. **(PowerPoint)**

Mr. Bruins MOVED approval, seconded by Mr. Kazmierski.

Discussion followed on whether the proposed rule change that eliminates consideration of these emissions when determining applicability of permitting requirements relates to NR 406 and NR 407, what the effect would be if the Board moved to delay implementation until such time as EPA has developed guidelines and rules, whether a study group would work on BMP and try to advance those into the national scene, what NR 445 requires of facilities, and whether this rule should be delayed until EPA comes out with their rule.

Dr. Thomas MOVED, seconded by Mr. Hilgenberg to amend the rule to delay implementation until the Environmental Protection Agency (EPA) comes forward with a rule or the state legislature introduces alternative legislation.

Discussion followed on whether the amendment would affect the administrative code.

Marney Hoefler, Staff Attorney, stated that the delayed implementation is July 31, 2011. The Department is asking for hearing authorization to take out that delayed date. She did not know how the Board could delay implementation by motion at this time because a change must be done by rule and taken out to hearing. The legislature has already suspended this with a July 31, 2011 date. The Department does not know how the legislature will act tomorrow. The Department is asking the Board to remove the implementation date.

Discussion followed on the length of time it would take to change the implementation date by rule, whether this request would exempt agriculture, and whether the Board can vote on Thomas’ amendment since it was not noticed.

Dr. Thomas and Mr. Hilgenberg withdrew their motion to amend.

Discussion followed on what would happen if the legislature does not act on the rule tomorrow (June 23, 2011).

The original motion failed on a roll call vote of 3-4.

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|------------------------------|---------------------------|
| William Bruins – Yes | Preston Cole – No |
| Christine Thomas – No | Jane Wiley – Yes |
| Terry Hilgenberg – No | David Clausen – No |
| Greg Kazmierski – Yes | |

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

3.B.1 Request adoption of Board Order FR-45-10 regarding changes to NR 46 and administration of the Managed Forest Law program

Paul DeLong, Forestry Administrator, spoke in place of Kathryn Nelson, Forest Tax Policy Chief. He highlighted the clean-up changes and streamlining administration of the MFL program. He requested the Board adopt Board Order FR-45-10.

Mr. Cole MOVED approval, seconded by Ms. Wiley. The motion carried unanimously.

3.B.2 ~~Ratification of Department decision to issue Stewardship grants for project that will prohibit two nature based outdoor recreation activities (NBOA) on non department land: Waukesha County Reese Acquisition (Pewaukee River Greenway), City of Pewaukee; and Waukesha County Best Acquisition (Menomonee Park Expansion), Village of Menomonee Falls~~ **DELETED**

3.B.3 Request adoption of a new sharp-tailed grouse management plan and conservation strategy for Wisconsin

Sharon Fandel, Assistant Upland Ecologist briefed the Board on the status of the Sharp-tailed Grouse, its range contraction from 1850, recent population data, genetic status, conservation challenges, the Department's conservation partners, and issues, goals, and recommended actions for plan implementation to 1-include habitat availability and management, 2-genetic and population viability, 3-survey's and research, and 4-managed harvest. She requested the Board adopt the new sharp-tailed grouse management plan and conservation strategy for Wisconsin. **(PowerPoint)**

Chair Clausen thanked staff for the work that went into the plan and conservation strategy.

Discussion followed on whether habitat is key to restoring the population, whether there are any predatory concerns, that status of securing the Hamerstrom wings in order to compare prior DNA with current DNA, and whether the Department has reached out to trappers to reduce predatory mortality.

Public Appearances:

1. **Ralph Fritsch**, Townsend, representing WI Wildlife Federation as Wildlife Committee Chair. He stated their strong support for the overall goal of the plan "to ensure a viable population of sharp-tailed grouse within the state that also provides regulated harvest opportunities. In addition the current on-going genetic rescue efforts need to be completed and the success of the efforts need to be thoroughly evaluated. There also needs to be a thorough evaluation of the impacts of harvest mortality on overall populations. **(Handout)**
2. **Dr. Scott Lutz**, Madison, representing UW-Madison, Dept. of Forest and Wildlife Ecology spoke in support of the management plan. He believes the key to success will be forging partnerships to manage key acreages across metapopulation areas identified in the plan. Forming these partnerships is critical, is different from traditional practices that focus on property owned, and will require creative approaches to land management. Adopting these land management actions will allow dispersal among lek clusters and insure long term population viability, but will require new approaches to management.
3. **Tom Davis**, Green Bay, representing the Wisconsin Sharp-tailed Grouse Society stated the meticulously thought-out plan provides a framework for ensuring that the sharp-tailed grouse remains a part of Wisconsin's landscape, life, and culture. The Society urged the Board to approve the plan and to embrace it. **(Handout)**

Mr. Kazmierski MOVED to table, seconded by Dr. Thomas, until a Predation Management Plan is included in the Management Plan and Conservation Strategy.

Discussion followed on modifying the motion to adopt with a time constraint, the length of time the Department has worked on the plan, an estimation of time and funds needed to focus on a predatory management plan, and whether a feasibility study would be cost effective.

Mr. Kazmierski MOVED, seconded by Dr. Thomas to substitute this motion with one that approves the Department recommendation and requires staff to prepare a predation management plan, and to report back to the Board at the August 2011 meeting on an update and timeline on that Plan.

The original motion as amended carried unanimously.

3.B.4 Land Acquisition - White River Fishery Area - Waushara County

Dr. Thomas MOVED approval, seconded by Mr. Bruins. The motion carried unanimously.

3.B.5 Land Acquisition - Brule River State Forest - Douglas County

Mr. Cole MOVED approval, seconded by Ms. Wiley.

Discussion followed on what parts of the State Forest boundary are not open to hunting and trapping in season.

The motion carried unanimously.

3.B.6 Land Acquisition- Statewide New Hatcheries - Door County

Mr. Hilgenberg MOVED approval, seconded by Mr. Bruins.

Discussion followed on whether this parcel would be open to hunting.

The motion carried unanimously.

Mr. Cole asked Secretary Stepp to write a letter to Elizabeth Rocker acknowledging her support of the ongoing work at the facility and for selling her property to the Department.

3.B.7 Land Acquisition - Governor Knowles State Forest - Polk County

Mr. Bruins MOVED approval, seconded by Ms. Wiley. The motion carried unanimously.

3.B.8 Land Transfer and Project Boundary Modification – Willow Creek Fishery Area – Richland County

Mr. Hilgenberg MOVED approval, seconded by Mr. Kazmierski. The motion carried unanimously.

Dr. Clausen moved the meeting to item 5 - Board Members' Matters.

5. Board Members' Matters

Mr. Bruins spoke on delisting the wolf. He expressed the growing concern amongst landowners that something needs to happen. He strongly encouraged the Department to submit comments to the US Fish and Wildlife Service prior to July 5, 2011 and to make the language as strong as possible to send a clear signal that something has to be done.

Dr. Thomas requested an information item at a future meeting on prairie chickens to include data from the last breeding season, what the Department is doing, and what needs to be done.

Mr. Hilgenberg asked for continued discussion and publication of the charter agency concept. He stated it is very important that communication be open. People are very concerned on both sides about this.

Mr. Kazmierski requested that he would like to review all Memorandums of Understanding (MOU) that the Department has entered into with non-government organizations (NGO).

Dr. Clausen distributed his research paper on the Gogebic Range for Board Member review. He will propose an action item at a future meeting and will coordinate with the Secretary's office on what form that may take. There is a lot of information and misinformation flying around on whether a mine is feasible, and what the impacts of mining are. **(Handout)**

He then stated that during item 3.A.1 this morning he mentioned economic justice and air quality concerns. He will coordinate with the Secretary's office to request a presentation at a future meeting where a discussion can take place and possibly take public testimony. **(Handout)**

6. Special Committees' Reports
None

7. Department Secretary's Matters

7.A. Retirement Resolutions

- 7.A.1 Robert P. Barnum
- 7.A.2 Michael Coshun
- 7.A.3 Jeffrey J. Dauterman
- 7.A.4 Robert Focht
- 7.A.5 Karl Hansen
- 7.A.6 Dan Helf
- 7.A.7 John Huppert
- 7.A.8 Loren Larson
- 7.A.9 John H. Melby, Jr.
- 7.A.10 Peter Prusak
- 7.A.11 James Rakitnichan
- 7.A.12 James Schaefer
- 7.A.13 Edward Schmechel
- 7.A.14 Joel Weinert
- 7.A.15 Todd O. Wipperman
- 7.A.16 Mike Lutz **ADDED**

Mr. Hilgenberg MOVED approval, seconded by Mr. Kazmierski of the retirement resolutions. The motion carried unanimously.

7.B. Donations

- 7.B.1 Sturgeon for Tomorrow will donate \$20,000 for the lake sturgeon exhibit at the Wild Rose Hatchery Education Center and another \$5,000 for the rearing of lake sturgeon at the Wild Rose State Fish Hatchery for a total donation of \$25,000

Ms. Wiley MOVED approval, seconded by Dr. Thomas. The motion carried unanimously.

- 7.B.2 The Friends of Devil's Lake State Park will donate \$16,000 to help fund an LTE position at the park to plan for and coordinate events for the 100th anniversary of Devil's Lake State Park

Ms. Wiley MOVED approval, seconded by Mr. Kazmierski. The motion carried unanimously.

8. Information Items

- 8.A. Air, Waste, and Water/Enforcement
None

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

8.B.1 Budget briefing

Joe Polasek, Management and Budget Bureau Director, gave an overview on the 2010-2011 budget by funding source, 2010-2011 authorized positions by funding source, the 2011-2013 biennial budget recommendations, 2011-2013 impact on authorized FTE positions, 2011-2013 budget highlights including technical modifications, program reductions, and bonding.
(PowerPoint)

Discussion followed on whether furloughs are planned for the 2011-2013 biennial budget, and whether staff will need to back-pay for their benefit cost increases once the budget repair bill is in effect.

Kurt Thiede, Land Administrator, gave an overview on Stewardship Annual Allocations from FY 10 through FY 14-20. He stated Stewardship is a very popular program. The take home message is there are changes to the program but bottom line is the Department still has the program. Stewardship funding is still a great opportunity to preserve open land. **(Handout)**

Discussion followed on whether there is funding for dam repair, whether LUGs would protest the payment in lieu of taxes (PILT) changes, the process of adjusting payments when a community is reassessed, and whether funding is encumbered during legislative review.

Ann Coakley, Waste and Materials Management Bureau Director updated the Board on recycling. She stated that the basic recycling provisions in the budget which was recently passed by the legislature maintains landfill bans, maintains recycling requirements, and maintains \$20 million in grants. It includes a new provision prohibiting a person from placing containers and paper products in a container designed for landfill disposal, incinerator or waste to energy facility. Local government “Responsible Units” (RUs) are required to maintain effective recycling programs. She noted that while there was a lot of controversy surrounding recycling this year, it really brought people together. It also brought to the forefront the value of recycling for both the environment and economy. It is less expensive to recycle than it is to landfill. **(PowerPoint)**

Russ Rasmussen, Deputy Water Division Administrator briefed the Board on impacts of the budget to the water program. He reviewed bonding which the Department received a \$7 million increase to use for the biennium. The urban non-point and municipal flood plain program received \$6 million for the biennium, dam repair and removal received \$4 million, and also \$6 million the Stewardship set aside for dams. He then discussed the status of funding for the Sediment Remediation Projects in Great Lakes areas of concern, the non-point pollution control standard, agricultural research projects, and that the Department will be required to do economic impact analyses for shoreland and phosphorus rules.

INFORMATIONAL ITEM – NO ACTION WAS TAKEN

Dr. Clausen requested a motion to convene into Executive Session under the authority of s.19.85(1)(g) Wisconsin Statutes for purposes of discussing litigation matters.

Mr. Bruins MOVED, seconded by Mr. Hilgenberg to convene into Executive Session under the authority of s.19.85(1)(g) Wisconsin Statutes for purposes of discussing litigation matters. The motion carried unanimously on a roll call vote.

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|-------------------------------|----------------------------|
| William Bruins – Yes | Preston Cole – Yes |
| Christine Thomas – Yes | Jane Wiley – Yes |
| Terry Hilgenberg – Yes | David Clausen – Yes |
| Greg Kazmierski – Yes | |

Dr. Clausen reconvened the meeting at 1:30 p.m. Chair Clausen reported that during the Executive Session no action was taken. He continued the meeting with 4.A. – Citizen Participation.

- 4. Citizen Participation
- 4.A. Citizen Participation

Public Appearances:

- 1. **Laurie Groskopf**, Tomahawk, representing self **(Handout)**
Topic: Wolf delisting, controlling WI’s wolf population, and continuing issues with public information provided by the wolf program
 She distributed wolf control resolution results by county. She stated that wolf delisting is very important to make progress in re-establishing the public’s faith in the wolf program and support for it. Wisconsin needs to quickly create a method to reduce wolf populations when delisting is

finalized. The Department needs to inform the public when wolves cause problems for farm animals, pets other than dogs, and for humans in a timely manner. Warning areas are only set up for hunting dogs attacked by packs.

2. **Lia Montgomery**, Algoma, representing Algoma's Shoreline Health Initiative For Tomorrow (Handout)

Topic: The devastation cladophora causes and the ways we can lessen the impacts in Lake Michigan

She stated the importance of sharing responsibility to manage and safeguard our water from cladophora. On bad algae days, the smell is almost toxic. Beaches have become a haven for bacteria and e-coli. Tourism suffers and their own community stays away. Last year she looked for help but found none for beach cleanup. Cladophora is nourished by phosphorus and nitrogen. We need to control run-off. Human over-extraction and dredging have led to the lowest lake levels in decades. Please think about Lake Michigan and Lake Superior shores when thinking of phosphorus and water withdrawal permits. Today's job opportunities can lead to the devastation of lakes we all depend on.

3. **Nancy Utesch**, Kewaunee, representing self

Topic: Open/illegal burning in Kewaunee County

She stated that State law prohibits illegal burning. For the last seven years she has tried to address illegal burning. This is a huge problem in Kewaunee County and throughout the state. The burning of items such as shingles, plastic silage bags, household trash, and tires are polluting the air, putting citizens at risk for health problems, and contributing to air quality issues. Illegal burning takes place on the ground, in barrels, and in abandoned silos. She has contacted the county, state, and local governments. They responded to her that enforcement lies at the local level since the Department does not have citation authority. She requested the Department receive citation authority.

Discussion followed on what the Board's role is and whether a model ordinance could be helpful.

Pat Stevens, Air and Waste Administrator stated that the Department does not have citation authority for burning violations. The challenge the Department face is that enforcement cases take a very extensive investment to pursue. The legislature has looked at this before but did not act to give the Department citation authority.

Secretary Stepp stated that the only recourse the Department has now is to go through the Department of Justice when the Department could handle more effectively. This is a policy decision that is in the hands of the legislature.

Whether the Board could include citation authority in their legislative agenda for this session.

Secretary Stepp stated she would be happy to have staff assist in this but wanted to be clear that this was the Board's request.

Discussion followed on whether the Department is aware of any jurisdictions that ban open burning within city limits, and where funding and resources would come from if the Department received citation authority,

4. **William Iwen**, Algoma, representing self

Topic: Illegal burning

He stated that air pollution is on the increase. It contributes to human and animal problems and leads to water pollution. Adding to the problem are factory farms which use huge quantities of fossil fuels, pesticides, herbicides, and hormones. This leads to more soil erosion, dead zones, stinking beaches, more costs to taxpayers, and degradation to life. The

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Department must do the right thing for the environment and not special interest groups and the almighty dollar. Evil can occur only when good men remain silent.

5. **Dean Gullickson**, Chippewa Falls, representing Chippewa Valley Outdoor Resource Alliance, Inc. was not in attendance. *Topic:* Renaming of Cedar Creek Wetlands

Dr. Clausen, after the public appearances were heard, moved the meeting to item 8.B.2.

8.B.2 Administrative rules update

Tim Andryk, Acting Legal Services Bureau Director briefed the Board on Act 21 related to Administrative Rule Making. He highlighted that most rules will take between two to three years on average instead of 12 to 18 months. There will be additional Board approval on scope statements – no passive review, additional public hearing authorization requests will be likely depending on the length of time it takes to prepare the Economic Impact Analysis, and additional legislative and gubernatorial involvement and oversight of the process. He then clarified agency rule authority. He further defined the scope statement process, economic impact analyses, legislative review, Standing Committee review, and Joint Committee for Review of Administrative Rules (JCRAR) actions, and changes to the rules process with Act 21 revisions.

(PowerPoint)

Discussion followed on whether Act 21 affects the ability of citizens to petition for rulemaking, whether Act 21 has any effect on the emergency rule process, further clarification on the economic impact analysis, and whether the sunset rule for emergency rules will create a gap between the emergency rule and permanent rule

INFORMATIONAL ITEM – NO ACTION WAS TAKEN

Kurt Thiede, Land Division Administrator, invited the Board to attend the 100th anniversary celebration at Devil's Lake State Park on Saturday, June 25 at 9:30 a.m. He apologized for the late invitation and that the official invite should be in tomorrow's mail.

Dr. Thomas MOVED, seconded by Mr. Bruins to adjourn the meeting. The motion carried unanimously.

The meeting adjourned at 2:21 p.m.

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Natural Resources Board Liaison: Laurie Ross at 608-267-7420 or laurie.ross@wisconsin.gov

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