

MARCH 25, 2009

NATURAL RESOURCES BOARD

MINUTES

The regular meeting of the Natural Resources Board was held on Wednesday, March 25, 2009 in Room G09, State Natural Resources Building (GEF 2), Madison, Wisconsin. The meeting was called to order at 8:30 a.m. for action on items 1-7. The meeting adjourned at 12:45 p.m.

ORDER OF BUSINESS

1. Organizational Matters

1. A. Calling the roll

David Clausen – present	Preston Cole – present
Jonathan Ela – present	Gary Rohde – present
John Welter – present	Christine Thomas – present
Jane Wiley – present	

1.B. Approval of agenda for March 25, 2009

Dr. Clausen MOVED, seconded by Mr. Ela approval of the agenda for March 25, 2009. The motion carried unanimously.

1.C. Approval of minutes from February 24-25, 2009

Mr. Ela MOVED, seconded by Mr. Rohde approval of the minutes as presented. The motion carried unanimously.

2. Ratification of Acts of the Department Secretary

2.A. Real Estate Transactions

Discussion followed on which funds the allotment money for current land acquisition balances comes from and the borrowing ahead process for Stewardship funds.

Mr. Rohde requested staff give a fiscal year-end report on real estate transactions at the August 12, 2009 meeting.

Mr. Welter added to Mr. Rohde's request that staff also report back on priorities.

Discussion continued on the increase of property offerings to the state and the opportunity costs to borrowing ahead.

Mr. Ela MOVED, seconded by Dr. Clausen approval of the real estate transactions. The motion carried unanimously.

3. Action Items

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

3.A.1 Presentation of the 2009 Laboratory of the Year Awards

David Webb, Section Chief, Environmental Science Services stated that these awards are presented annually to recognize Wisconsin's best registered laboratories for their outstanding commitment to producing high quality environmental data. They put the science in sound science. Two awards are presented to registered laboratories; one for a large and one for a small facility.

Small Registered Facility Award: Spencer Wastewater Treatment Plant

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Pat Henderson, Deputy Secretary, presented the award to the Village of Spencer Wastewater Treatment Facility and congratulated them on this achievement.

Chris Helgestad, Laboratory Manager, and Gerald Marden, retired Lab analyst, accepted the award and thanked the Department.

Large Registered Facility Award: Sheboygan Wastewater Treatment Plant

Mr. Henderson, Deputy Secretary, presented the award to the Sheboygan Wastewater Treatment Facility and congratulated them on this achievement.

Dale Doerr, Superintendent, **Al Zengler**, Laboratory Manager, and **Tom Tocco**, Laboratory Analyst accepted the award on behalf of all 15 employees at the facility and thanked the Department.

Dr. Thomas congratulated both facilities for keeping the waters of Wisconsin in good shape. Their efforts are very much appreciated.

INFORMATION ITEM – NO ACTION WAS TAKEN

3.A.2 Request approval of the FY 2010 Laboratory Certification Program Fee Adjustment

David Webb stated that under this proposal, the Department would collect sufficient fee revenue to operate the program at \$161,779 (20.26%) below its \$798,600 estimated spending authority. The number of RVUs available for FY 2010 is 10,468, representing an increase of 1466 (16.29%) units. The cost per RVU proposed for FY 2010 is \$57.50, which is \$10.50 (15.44%) less than the RVU cost in FY 2009. The number of laboratories in the program has declined, although not dramatically. For FY 2010 the program is distributing costs among 413 laboratories, seven less (1.67%) than those in the program in FY 2009. He requested the Board approve the program's FY 2010 fee adjustment proposal

Discussion followed on how often the fees decrease and if the staff vacancy will be filled.

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

Larry Bruss, Section Chief, Regional Pollutant and Mobile Source combined the presentations for agenda items 3.A.3, 3.A.4, and 3.A.5. He stopped after each agenda item for discussion and action.

3.A.3 Request Adoption of Board Order AM-19-08, proposed rules affecting NR 422 and 423 pertaining to Reasonable Available Control Technology for VOC sources engaged in solvent cleaning; lithographic printing; flexible package printing; flat wood panel coating; paper, film and foil coating; large appliance coating and metal furniture coating.

Mr. Bruss, stated that the Department proposes these rules to meet the requirements of Section 182(b)(2) of the federal Clean Air Act. These proposed rules apply in Wisconsin's seven moderate ozone nonattainment counties (Kenosha, Milwaukee, Ozaukee, Racine, Sheboygan, Washington and Waukesha). The current limitations previously established in Administrative Code remain in place for each of these RACT categories. He requested the Board approve Board Order AM-19-08.

Discussion followed on changing the applicability threshold from 15 lbs/day to 3 tons/year and whether this rule will result in attainment

Dr. Clausen MOVED approval, seconded by Mr. Ela. The motion carried unanimously.

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- 3.A.4 Request Adoption of Board Order AM-23-08, proposed rules affecting chs. NR 421 and 439, pertaining to establishing volatile organic compound (VOC) emission control requirements for synthetic organic chemical manufacturing industry facilities classified as major VOC sources in Wisconsin's ozone nonattainment areas.

Larry Bruss stated that on March 17, 2008, EPA notified DNR that Wisconsin's state implementation plan (SIP) was deficient because the Department had not yet promulgated VOC RACT emission limits that are consistent with several EPA CTGs in Wisconsin's ozone nonattainment areas. The proposed rule would require VOC RACT measures (recommended in EPA guidance) to effectively reduce VOC emissions from any applicable SO2 facility's air oxidation or distillation and reactor operations in Wisconsin's ozone nonattainment areas. These control measures largely involve the destruction of VOC emissions by combustion devices such as boilers, incinerators or flares. He requested the Board approve Board Order AM-23-08.

No discussion followed the presentation.

Mr. Ela MOVED approval, seconded by Dr. Clausen. The motion carried unanimously.

- 3.A.5 Request Adoption of Board Order AM-24-08, proposed rules affecting chs. NR 419 and 484, pertaining to establishing volatile organic compound (VOC) emission control requirements for industrial wastewater collection and treatment operations from major VOC sources in Wisconsin ozone nonattainment areas

Larry Bruss stated that on March 17, 2008, EPA notified DNR that Wisconsin's state implementation plan (SIP) was deficient because DNR's rules did not set VOC RACT emission limits that are consistent with several EPA CTGs in Wisconsin's ozone nonattainment areas. The IWCT operations comprise one of these CTG VOC source categories for which the Department has yet to promulgate a mandated RACT rule. The proposed rule would require VOC RACT measures that are listed in EPA guidance (including the CTG) as being highly effective towards reducing VOC emissions from any applicable IWCT operations.

Almost all of the VOC emissions from IWCT processes simply evaporate from the waste stream when exposed to the ambient air. Consequently, the VOC RACT requirements stated in the proposed IWCT rule largely consist of implementing technologies and work practice standards that would combine to substantially suppress the exposure of the VOC-laden waste stream to the ambient air. He requested the Board approve Board Order AM-24-08.

Discussion followed on emission limits for sources.

Mr. Ela MOVED approval, seconded by Mr. Rohde. The motion carried unanimously.

Discussion followed on attainment, what standards the southeast counties are not meeting, and when EPA will lift economic sanctions.

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

- 3.B.1 ~~Request Adoption of Board Order IS-34-06, creating ch. NR 40 relating to the identification, classification, and control of invasive species~~ **DELETED**

- 3.B.2 Request Adoption of expanded project boundary for the Paradise Valley addition to Southern Unit of the Kettle Moraine State Forest and review of feasibility study

Tim Lizotte, Area Wildlife Supervisor for the Waukesha and Walworth Counties and **Tom Hauge**, Wildlife Management Bureau Director gave a joint presentation. They stated the proposed Paradise Valley addition in Waukesha County is within one of the state's most populated and rapidly developing areas. For several years, there has been a growing interest among local citizens, landowners, conservation organizations, local governments, and department staff to conserve additional land for wildlife habitat and public recreation within this area.

This boundary expansion totals 6,318 acres, with an acreage goal of 4,000 acres for the Southern Unit of the Kettle Moraine State Forest in southwest Waukesha County. This request is based on a recently completed feasibility study which evaluated the physical and biological

environment, views of the public, area landowners, and the availability of department resources to accomplish the project's purpose. The Department anticipates primarily using fee title acquisition for the proposed boundary addition, however, easements will be considered if they provide public access to develop habitat and allow public recreation. They requested the Department approve the expanded project boundary for the Paradise Valley addition.

Discussion followed on public involvement and feedback.

Public Appearances:

1. **Don Camplin**, North Prairie, representing Waukesha County Conservation Alliance stated their support for the adoption of the expanded project boundary. To preserve this land we must work at restoring our water supply and ensuring land uses comply with smart growth plans. **(HANDOUT)**

Dr. Thomas thanked Mr. Camplin for all the great things he and the Waukesha County Conservation Alliance do for the state of Wisconsin.

2. **George Meyer**, Poynette, representing WI Wildlife Federation as Executive Director stated their enthusiastic support for the adoption of the expanded project boundary. This is the time to be involved in protecting it.

Mr. Cole MOVED approval, seconded by Mr. Ela.

Discussion followed on the amount of acreage slated for future purchase by the Department, the strong element of public support for this project, whether a boundary adjustment might be made in the future, and designating main project goals for each property.

The motion carried unanimously.

- 3.B.3 Request Authorization for Public Hearing for Board Order FR-09-09, revisions to NR46, related to stumpage rates and administration of the MFL program

Kathryn Nelson, Forest Tax Section Chief stated that Changes to NR 46 are done annually to update the stumpage values used to collect yield taxes for lands entered under the Forest Crop Law (FCL) and Managed Forest Law (MFL) programs. Additional changes to streamline the MFL program are being done to clarify how the department will administer the entry of lands that span municipal lines, create a draft deadline date for plans submitted for the current July 1 deadline and change the deadline for when completed and approved management plans are returned back to the department. She requested the Board approve Board Order FR-09-09.

Discussion followed on the definition of biomass, whether comments were received from the paper industry and utilities, and the biomass assessment fee.

Dr. Thomas stated that three or four Board members who participate in Managed Forest Law have recused themselves in the past. Since this item is for public hearing authorization, she asked all members to vote.

Mr. Welter MOVED approval, seconded by Dr. Clausen. The motion carried unanimously.

Dr. Thomas requested staff to obtain an official ruling from the Government Accountability Board regarding potential Board member conflict of interest related to voting on MFL and other possible items.

- 3.B.4 Land Acquisition – Flambeau River State Forest – Sawyer County

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

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3.B.5 Land Acquisition & Donation – Statewide Natural Areas – Door County

Discussion followed on the potential value of this property if the easement was removed.

Mr. Ela MOVED approval, seconded by Mr. Rohde.

Discussion continued on the Department's investment in the easement.

The motion carried unanimously.

3.B.6 Land Acquisition – Rush Creek Natural Area – Crawford County

Mr. Welter MOVED approval, seconded by Dr. Clausen. The motion carried unanimously.

3.B.7 Land Acquisition – Clam River Fishery Area – Burnett County

Dr. Clausen MOVED approval, seconded by Mr. Welter. The motion carried unanimously.

3.B.8 Land Acquisition – Prairie River Fishery Area – Lincoln County

Discussion followed on if the Department was in discussion with the bank prior to the quit claim.

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

3.B.9 Land Donation – Ice Age Trail – Waushara County

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

3.B.10 Land Acquisition & Project Boundary Modification – Nicolet State Trail – Forest County

Richard Steffes, Real Estate Bureau Director distributed a trail map of the property
(HANDOUT)

Discussion followed on the use of Stewardship funds for this land purchase.

Ms. Wiley questioned if funds could be taken out of the Department's ATV Fund.

Discussion followed on what the ATV account is used for.

Ms. Wiley MOVED approval and to amend, seconded by Mr. Welter, that funds for this purchase will be taken out of the Department's ATV Fund instead of the Stewardship Program.

Mr. Henderson stated that Stewardship dollars have been used in the past for the purchase of ATV trails. The Stewardship fund is the Department's acquisition pot. This purchase would not be precedent-setting and that he could make a strong argument that this is appropriate. Secondly, as we move into new world of Stewardship and access requirements, that rule is for access and not for acquisition. As long as ATV funds for this purchase are available, we would also be justified in using them. Stewardship funds are still a viable option for future purchases.

Discussion followed on nature based outdoor recreation, using ATV funds for this purchase, keeping Stewardship funds available for other purposes, what appropriation the ATV funds come from, how the ATV funds are used, and why the Department did not recommend using ATV funds initially.

The motion as amended carried unanimously.

4. Citizen Participation – 11:00 a.m.

4.A. Citizen Participation

Public Appearances:

1. **Dan Pawlitzke** and **Mike LeClair**, representing **Lake Michigan Commercial Fishing Board** (LMCFB) as Board Members *Topic: Whitefish Quota (HANDOUT)*

NOTE: In accordance with s. 15.345, Wis. Stats., the Lake Michigan Commercial Fishing Board shall serve in an advisory capacity to the Natural Resources Board and therefore is uniquely granted the permission to address the Board without a time restriction.

Mr. Pawlitzke stated the LMCFB supports the concept of increasing the quota within Zone 1 and Zone 3 for commercial fishers by 100,000 pounds each and urged the Board to request a rule to be adopted that would go into effect by July 2009. If the rule process for this timeframe was no longer possible, he then requested to have the rule effective on April 1, 2010.

Discussion followed on the make-up of the LMCFB, the process for getting on the LMCFB, the LMCFB's vote on February 6, and on LMCFB members not being able to vote on issues due to ethics concerns when an LMCFB recommendation, if it were to become a proposed rule, may affect their own fishing opportunity, the Government Accountability Board's response to LMCFB concerns, the extent of conflicts with sport fishers, how mobile the whitefish are, purchasing unused quota from other fishers and other zones, the difficulty in catching fish in zone 2 areas where slime and moss are prevalent, why this request is being made prior to the completion of the Department's study, when this study was targeted for completion, and why this study has not yet been completed.

Todd Ambs, Division of Water Administrator stated there are significant issues with species in Lake Michigan and that the dynamics of the system are rapidly changing. The study will be completed in June 2009.

Mr. Welter stated the structure of the Lake Michigan Commercial Fishing Board should be addressed by the legislature. Due to a ruling by the Government Accountability Board, potentially interested members cannot vote on issues on which they are supposed to advise the Natural Resources Board. That may lead to recommendations being voted on by only a few members of the LMCFB.

Discussion followed on the limited ability of the LMCFB to advise the Natural Resources Board and how the LMCFB came up with the poundage increase of 100,000 in their request.

Dr. Thomas requested staff bring this item back in the form of a public hearing authorization request at the August 12, 2009 Board meeting with rule adoption in time for the 2010 fishing season. She stated the Board is respectful of science, but the public needs answers on a timely basis.

2. **Lois Swain**, Deerfield, representing self *Topic: Hunting with rifles*. She requested the Department stop the use of rifles on state land located next to their home. She asked the Department to communicate with her and the public as to what is going on.

Discussion followed on who her contact at the Department has been and the Department's process in this matter.

3. **Mike Henneberry**, Watertown, representing Shotgun Only Deer Hunting (S.O.D.) *Topic: S.O.D. members want to return to the "pre-CWD era" weapon use rules for hunting Deer*. He stated they are not against rifles but want to see this rule changed back. If it takes closing lands to hunting, requiring only shotguns be used on their lands, or obtaining thousands of signatures to support the pre-2008 rules specifying which firearms can be used, they will do it. (HANDOUT)

Discussion followed on the Pennsylvania study that was noted at the February 25 meeting information item.

4. **Howard Olson**, Cambridge, representing Shotgun Only Deer Hunting (S.O.D.) *Topic:* Returning 11 deer management counties that allowed rifles for deer in 2008 to shot-gun only. He urged the Board return to shotgun only deer hunting rules in the eleven-county area. It has worked well for decades. (HANDOUT)

Discussion followed on the membership of S.O.D. and the use of rifles on private property.

Dr. Thomas stated that Ms. Swain was told at a previous meeting that it may be possible to deal with this issue during the deer season structure item at the April 22 meeting which was not a correct assumption. She asked Department staff for possible options from a process standpoint.

Tim Andryk, Department Attorney stated this can only be established by rule. It would take a rule change to deal with this. Following the normal rule process, it would not take effect this fall. An emergency rule, if justified, could take effect by fall. It would become valid upon publication.

Dr. Thomas requested John Welter, Land Management, Recreation, and Fisheries/Wildlife Committee Chair review the issue and consult with interested people and staff and report back to the Board with a report and recommendation.

Mr. Cole stated he received information from Mr. Henneberry and will have this information forwarded to the full Board.

5. Board Members' Matters

Dr. Clausen stated his concerns about the contaminated CWD deer farm in Portage County. There has been some debate as to best way to do this. He distributed and read a resolution for Board approval that would be submitted to the Department for legislative action and public discussion.

STATE OF WISCONSIN
NATURAL RESOURCES BOARD
RESOLUTION

RELATING TO: Recommending prompt development of a proposal to the legislature for action to strengthen state agency authority and capability to prevent the spread of animal diseases harmful to Wisconsin's wild and farm-raised deer herds.

WHEREAS, The Natural Resources Board understands that Wisconsin's wild white-tailed deer herd is one of the state's most valuable natural resources, and that deer are a resource of recreational, economic, and ecological significance to all citizens; and,

WHEREAS, chronic wasting disease (CWD) is a serious threat to Wisconsin's deer herd and is transmitted by prions from animal to animal, and,

WHEREAS, scientific studies are providing new evidence of the persistence of CWD prions in the soil of captive deer enclosures over a period of years and the role of transmission of prion diseases through those CWD prions, and,

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WHEREAS, one or more de-populated deer farm sites in Wisconsin present the risk of prion diseases spreading to wild deer outside of the area where the disease is currently found, and potentially in turn spreading CWD from newly-infected wild deer herds to nearby deer farms; and,

WHEREAS, the Department of Natural Resources (DNR) and Department of Agriculture, Trade and Consumer Protection (DATCP) have only limited authority to address this ongoing, significant risk of spread of CWD, especially including the lack of authority to require that fencing of CWD-positive depopulated deer farms be maintained until it can be scientifically proven that those sites no longer pose a threat of infection to adjacent wild deer herds;

NOW, THEREFORE BE IT RESOLVED, that the Natural Resources Board requests the prompt development of a proposal to the legislature for action to strengthen the authority of the Department of Natural Resources and Department of Agriculture, Trade and Consumer Protection, as appropriate, to take action to prevent the spread of animal diseases from de-populated deer farm sites.

BE IT FURTHER RESOLVED, that copies of this resolution be transmitted to the chairs of the Natural Resources Committees of the State Senate and Assembly.

ADOPTED IN MADISON, WISCONSIN, THIS 25TH DAY OF MARCH, 2009

NATURAL RESOURCES BOARD

Christine Thomas, Board Chair

John Welter, Chair
Land Management, Recreation &
Fisheries/Wildlife Committee

Dr. Clausen MOVED approval, seconded by Mr. Welter.

Discussion followed on what form of legislation could be taken.

The motion carried unanimously.

Ms. Wiley thanked the Natural Resources Foundation for an excellent experience of seeing the whooping cranes and snorkeling with the manatees in Florida a few weeks ago as part of their Foundation tours. She encouraged other Board members to participate in the trip in future years.

Mr. Rohde requested that the Board receive deer season recommendation briefings as soon as possible. He noted there has been a lot of activity and interest by people around the state. This is a topic of concern.

Dr. Thomas requested the Board receive the deer season information that has already been taken out to the public.

Mr. Welter stated that 28% of the Board has gone paperless (e-documents instead of paper) and asked other Board members to consider this method.

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6. Special Committees' Reports
None

7. Department Secretary's Matters

Pat Henderson, Deputy Secretary spoke in place of Secretary Matt Frank who was not in attendance. He briefed the Board on the turkey permit process and how this year's sale is progressing. Staff worked hard with contractors over the past year to get this fixed. He thanked staff for a successful kick-off and asked others to do the same.

He then stated that Secretary Frank testified in front of the Joint Finance Committee on the Department's budget and that it went relatively uneventfully.

He updated the Board on newly introduced bills related to electronic waste, green tier, and invasive species. He added that Representative Hraychuck and Senator Holperin have scheduled listening sessions on deer seasons. This will also come before the legislature in April.

- 7.A. Retirement Resolutions
7.A.1 David R. Lundberg
7.A.2 Roger Larson
7.A.3 Greg Hill

Mr. Welter MOVED approval, seconded by Dr. Clausen of the retirement resolutions. The motion carried unanimously.

- 7.B. Donations

- 7.B.1 The Natural Resources Foundation will donate \$313,988 in support of the Department of Natural Resources

Public Appearances:

1. **Bruce Braun**, Fitchburg, representing The Natural Resources Foundation of WI, Inc. (NRF) as Chairman. He acknowledged NRFW Board members Dave Ladd, Ron Semman and George Meyer, who were in attendance at the meeting and Charlie Luthin, Executive Director. He stated the NRF was created in 1986 as a statewide friends group to the Department to raise alternate sources of funding to support statewide conservation priorities.

He presented the Board with today's gift of over \$314,000, which brings total donations in the past three years to \$1 million in cash. He thanked Jane Wiley for her interest and contributions to the NRF and for the Board's attention and support. **(HANDOUT)**

Mr. Welter MOVED approval, seconded by Mr. Ela. The motion carried unanimously.

- 7.B.2 The Whooping Crane Eastern Partnership will donate \$55,500 in support of whooping crane management activities

Mr. Welter MOVED approval, seconded by Dr. Clausen. The motion carried unanimously.

- 7.B.3 Windway Foundation, Inc. will donate \$5,000 to the Endangered Resources Trumpeter Swan Program

Mr. Ela MOVED approval, seconded by Mr. Rohde. The motion carried unanimously.

- 7.B.4 The Mark Opgenorth family will donate \$5,000 to be used towards the Strawberry Creek Renovation Project

Mr. Rohde MOVED approval, seconded by Mr. Welter. The motion carried unanimously.

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8. Information Items
8.A. Air, Waste, and Water/Enforcement
None

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

1. Nature is Our Business

Elizabeth Kluesner, Nature is Our Business Project Coordinator reported that this strategic initiative for the Department seeks to coordinate efforts to enhance outdoor skills education, builds on the financial investment of the Stewardship Program, recognizes future trends related to outdoor recreation, and gets more people participating in outdoor recreation. She gave an overview of the program and described how it integrates outdoor recreation and green travel initiatives with local economies. She noted that Jefferson County and the Lac du Flambeau area are the two pilot locations where implementation of the first stages of where this initiative will take place.

No discussion followed the presentation.

INFORMATION ITEM – NO ACTION WAS TAKEN

Mr. Welter MOVED, seconded by Mr. Ela to adjourn the meeting. The motion carried unanimously.

The meeting adjourned at 12:45 p.m.

NOTE: Each Natural Resources Board meeting is recorded. Tapes of each meeting are available for purchase by contacting the Natural Resources Board at 608-267-7420. The following resources are also available: Agenda Item Packets (green sheets), supporting documents, and public comment.