

NATURAL RESOURCES BOARD
Conference Call
Minutes

A special meeting of the Natural Resources Board via telephone conference call was held Tuesday, April 6, 2004, in Room 774B of the State Natural Resources Building (GEF 2), 101 South Webster Street, Madison, Wisconsin.

The meeting was called to order by Chairman Gerald O'Brien at 9:02 a.m.

Participating Board Members:

Gerald M. O'Brien, Chair (Stevens Point)
Howard D. Poulson, Vice-Chair (Palmyra)
Jonathan P. Ela, Secretary (Madison)
Herbert F. Behnke (Shawano)
Stephen D. Willett (Phillips)
Christine L. Thomas (Stevens Point)

ORDER OF BUSINESS

1. Adoption of Emergency Orders FH-13-04(E) through FH-23-04(E) revising Chapters NR1, 300, 320, 325, 326, 328, and 340, creating Chapters NR310, 329, 341, 343, and 345, repealing Chapter NR 322, and repealing and recreating Chapter NR323, pertaining to implementation of 2003 Wisconsin Act 118 which went into effect on February 6, 2004.

Mr. O'Brien stated there were changes proposed to the rule since the March Board meeting and all members of the Board had been briefed prior to the conference call. There was one additional changes faxed to Board members this morning.

Todd Ambs, Administrator, Division of Water gave an overview of the changes since the March 24th meeting. He stated that since the February 6th effective date there have been 89 exemption requests of which 43 were exempt, 36 were for activities outside scope of statutory exemptions, three required a permit in lieu of exemption, and seven have not yet determined. Over the last couple of weeks the Department has been working with stakeholders and legislators to clean up the rule package. Most of the changes are clarifications, however there are two substantive changes, one involving grading and one involving one of the definitions of water of special natural resource. (See memorandum for changes)

Mr. Willett stated it was his understanding that part of the reason for the postponed vote was to meet with the various committees and legislators and asked if that has that been accomplished.

Mr. Ambs stated the staff has met several times with the leadership of the Natural Resources Committee and the Assembly, as well as, the Senate Environment Committee, Majority Leader, the Speaker's office, and a number of other legislators who have an interest in this package.

Mr. Willett stated he has not heard anything from any of those people. He assumes the Department has satisfied their concerns.

Mr. Ambs stated he hopes so. Most recently, he presented this to the Majority Leader's office and the staff of the head of Senate Environment Committee and the Assembly of Natural Resources there were no specific concerns raised.

Mr. O'Brien asked about change to NR 1 "As trustee of public waters, the department shall fully conserve and enhance public rights established under the laws of this state in our navigable waters. These public rights include, but are not limited to, the right to navigate, hunt fish, swim, recreate, enjoy natural scenic beauty in clean water free of environmental pollution, and other rights as may be established by the law in the future." He asked if hunt should be included and asked if people hunt in navigable waters.

Mr. Ambs stated that these activities are specifically protected as civil rights in the constitution and in case law.

Mr. Behnke asked about dredging. When an area has previously been dredged to make it navigable with a permit would it be possible to dredge it again without permit.

Mike Staggs, Director, Bureau of Fisheries Management and Habitat stated an individual permit would still be needed because a general permit hasn't been developed yet.

Mr. Ambs stated the only dredging allowed is when it is associated with another activity or you can manually dredge less than 2 cubic yards. Any other dredging will need a general permit that hasn't been developed yet. So an individual permit is needed.

Liesa Nesta, Statewide Waterway Policy Coordinator, Bureau of Fisheries Management and Habitat stated there are two situations where a dredging general permit has been developed: for utilities and drainage districts.

Ms. Thomas asked for clarification about the exempted activities in the twelve or thirteen thousand lakes that are not covered under the special waters designation. Those things still have to happen at the standards that predate the changes to Chap. 30, but it's up to the landowner to do these things up to our standards. In addition she asked who is going to make sure that people understand the questions they need to ask themselves. Basically, the Department is instead of being proactive, going to be reactive to these situations.

Mr. Ambs stated that for those types of exempt activities for those other bodies of waters there are public rights features. The landowner needs to ask themselves basic questions before they start one of these activities. The Department is going to try to educate people about Chap 30 by many means. If someone is doing something wrong the neighbors will call the Department and we will go and inspect it. He added that has been how it's been done in the past. That's why we have added waters and created public rights features. The Department will provide guidance in other waters and public trust features.

Mr. Poulson MOVED, seconded by Mr. Ela adoption of Emergency Orders FH-13-04(E) through FH-23-04(E) revising Chapters NR1, 300, 320, 325, 326, 328, and 340, creating Chapters NR310, 329, 341, 343, and 345, repealing Chapter NR322, and repealing and recreating Chapter NR323, pertaining to implementation of 2003 Wisconsin Act 118 which went into effect on February 6, 2004, as presented with the amendments.

Mr. Ela stated there are a couple of concerns brought up by legislators. Number one is that temporary rules tend to turn into permanent rules. He suggested a review of how the rules are working and instruct staff to prepare a report after 75 or 90 days before we go out to hearing for permanent rules. The report would include what problems being encountered and whether it is creating more work for the local governments.

Mr. Poulson stated that in making the motion the emergency rule is how we need to move at this point. We must work hard on permanent rule. He has had no indication of lawmakers being unhappy with the rules. Based on that, I think we are ready to adopt these rules.

The motion was carried unanimously by members present.

Mr. Ela MOVED, seconded by Mr. Willett instruct the staff to prepare a report back within 75-90 days on the experience that has been gained by emergency rule and any changes that need to be made for the permanent rules.

Mr. Willett stated the staff should have 120 days to get them through the summer to view all the problems that could potential arise.

Mr. Ela stated that the emergency rules expires in 150 days. The staff is going to need time to draft a permanent rule, it may get us in a bind.

The motion was carried unanimously by all members present.