

NATURAL RESOURCES BOARD

MINUTES

The regular meeting of the Natural Resources Board was held on Wednesday, September 28, 2005 at Lakeview Conference Center, 350 East Seven Hills Road, Port Washington, Wisconsin. The meeting was called to order at 8:30 a.m. for action on items 1-7. The meeting adjourned at 4:15 p.m.

Wednesday, September 28, 2005

ORDER OF BUSINESS

1. Organizational Matters

1.A. Calling the roll

Gerald O'Brien	Steve Willett
Herb Behnke	Dan Poulson
Jonathan Ela	Christine Thomas
John Welter	

All members were present.

1.B. Approval of minutes from August 17, 2005

Mr. Poulson MOVED, seconded by Mr. Willett approval of the minutes from August 17, 2005. The motion passed unanimously by all members.

1.C. Approval of minutes from August 11, 2005 Conference Call

Mr. Ela MOVED, seconded by Mr. Welter approval of the minutes from August 11, 2005. The motion passed unanimously by all members.

1.D. Approval of agenda for September 28, 2005

Mr. Behnke MOVED, seconded by Mr. Poulson approval of the agenda for September 28, 2005. The motion carried unanimously by all members.

2. Ratification of Acts of the Department Secretary

2.A. Real Estate Transactions

Mr. Welter MOVED, seconded by Mr. Willett approval of real estate transactions. The motion carried unanimously by all members.

3. Action Items

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

3.A.1. Adoption of Board Order DG-37-02, revisions to NR 140 pertaining to Groundwater Quality.

Michael Lemcke, Section Chief, Groundwater Management, Drinking Water and Groundwater Bureau stated Amendments are being proposed to Wisconsin Administrative Code Chapter NR 140, Groundwater Quality. Ch. NR 140, Wis. Adm. Code, establishes Wisconsin state groundwater quality standards for both substances of public health concern and for substances of public welfare concern. Amendments to ch. NR 140 are proposed to add groundwater quality standards for 2 substances of public health concern: Alachlor-ethane sulfonic acid (ESA) and Molybdenum, and to revise existing groundwater quality standards for 3 substances of public health concern: Butylate, Dacthal and Naphthalene.

Chapter NR 140 was adopted by the Natural Resources Board in 1985 to comply with Wisconsin Statute Chapter 160. Chapter 160, Stats., was created in May of 1984, and requires that the Department develop groundwater quality standards for substances detected in, or having a reasonable probability of entering, the groundwater resources of the state. In accordance with the provisions of ch. 160, Stats., amendments to ch. NR 140 groundwater quality standards are based on recommendations received from the Department of Health and Family Services.

The only known controversy associated with these amendments to ch. NR 140 relates to the proposed groundwater quality standards for Alachlor-ESA, a metabolite of the Monsanto Company produced herbicide, Alachlor.

The Board has approved amendments to ch. NR 140 in: 1988, 1990, 1991, 1993, 1995, 1996, 1998, 1999 and 2003. These amendments were made to add and revise groundwater quality standards and to clarify rule language. There are currently groundwater quality standards for 122 substances of public health concern, 8 substances of public welfare concern and 15 indicator parameters in ch. NR 140.

Mr. Willett asked what was the result of Monsanto's study.

Mr. Lemcke stated that their study was submitted to Department of Health and Family Services (DHFS) who reviewed the study. DHFS submitted the same number to the DNR as they submitted before the study.

Mr. Willett asked if there has been any consultation from the committees from the legislature.

Mr. Lemcke stated he hasn't heard anything from the legislature.

Mr. Poulson asked about surrounding states and their standards for this chemical.

Mr. Lemcke stated he doesn't think any of the surrounding states have any standards. Minnesota is in the process of developing standards.

Mr. Poulson stated he doesn't want to pollute the water, but they also don't want to hurt the state's agricultural economy. He asked what is a comparable figure.

Mr. Lemcke stated that the statutory language is clearly defined of how DHFS has to come up with their number.

Mr. Poulson asked if there was a built in peer review.

Mr. Lemcke stated he believes there is in how the statute was developed.

Public Appearances

Dr. Joel Kronenberg, St. Louis MO, Monsanto Company stated that Monsanto fully supports Wisconsin's goal of protecting groundwater resources and ensuring the safety of drinking water and has no objection to the establishment of scientifically sound, health-based groundwater quality standards. He believes the current proposal is scientifically flawed. He asked the Board to appoint an independent scientific review panel to conduct a peer review of the toxicology data on alachlor ESA, and of the methodology used and conclusions drawn by DHFS.

Mr. Willett asked about the DHFS formula that was statutorily prescribed. You state that it's 10 times lower than value determined by USEPA and European Union. Is that in the statute?

Dr. Kronenberg stated no that 164.13 describes the methodology to be used in calculation of enforcement standard.

Mr. Willett asked about the 10% no effect level is a DHFS figure.

Dr. Kronenberg stated that's correct. Our study concluded that the mid-level dosage was the no effect level, not the low-level as DHSF identified. He went on to explain other scientific disagreements between the two studies.

Dr. Thomas asked what are the effects that occur in test animals when given a high dosage.

Dr. Kronenberg stated that at the high level, there are blood changes and body weight loss. It doesn't taste good so the animals don't drink the water. There were no effects on any body organs.

Mr. Willett asked about the health advisories. What are the concerns?

Dr. Kronenberg stated that the concern is two fold. Number one this is bad science because it hasn't been peer reviewed. We are concerned that there will be restrictions on the use of alachlor and prohibition areas. He thinks it would put Wisconsin farmers at a disadvantage.

Mr. Ela stated that the Department adopts standards for many different chemicals in regards to ground water, surface water, air and these go through without a separate and formal peer review process. He asked for a definition of a standard for when a separate peer review is necessary.

Dr. Kronenberg stated he isn't familiar with all of Wisconsin's standards. Many are based on federal numbers. He stated that he thinks many have been evaluated by the EPA.

Mr. Ela asked Dr. Anderson to comment on Dr. Kronenberg's presentation.

Dr. Henry Anderson, Physician, DHFS stated that DHFS also regulates the parent compound and that level is 2. The difficulty with the metabolites is that they are not active ingredients so the requirements for testing those are not as stringent. The office of pesticides regulates the sale of the pesticide, but doesn't establish from the standard a reference dose. The studies we have currently for the metabolites are short term studies. The concern is that people drink the water for a lifetime and the compounds have been there. Most of the disagreement is how the statute is interpreted. He went on to explain how DHFS determined the standard.

Mr. Willett asked about the 1993 study and resulted in a 1994 health advisory. What has happened since that study?

Dr. Anderson stated there has been a lot more well water testing. There are only 13 wells that our advisory pertained to.

Mr. Willett asked if we know how this compound affects humans.

Dr. Anderson stated we don't have a way to test humans. There have been studies done on farmers, but they are exposed to many chemicals, not just the ones addressed in this rule.

Mr. Willett asked what has changed in the last eleven years that has changed your approach from advisory to enforcement.

Dr. Anderson stated that when we initially issued the advisory, Monsanto threatened to sue us saying we didn't have the authority to do this. There was an agreement that we moved to make a permanent standard and that is what we have done.

Mr. Willett asked what the overall impact of this rule in regards to public health and the economy.

Dr. Anderson stated that is a question for DATCP regarding the discontinuation of the use of this herbicide and it's affect on the crop economy.

Mr. Behnke asked how to remedy for a contaminated well.

Dr. Anderson stated that typically the well has multiple contaminates.

Jim Vandenbrook, Water Quality Section, DATCP stated that a prohibition four square mile around a well that is contaminated. With thirteen contaminated wells, that equates to about 25,000 acres that would be affected by the prohibition.

Mr. Behnke asked what happens to the groundwater, how long is it in the groundwater, when can we expect the chemical to no longer be present at a high level.

Mr. Vandenbrook stated there isn't a lot of information about that, but it seems to be stable in the ground water and may be there for some time.

Dr. Thomas asked what the human health affects are over the long term.

Dr. Anderson stated we don't know what the human health affects are. There may be a cancer risk. A parent chemical is treated as a carcinogen.

Mr. Ela asked how the 13 well figures that exceed the enforcement standard compare with the number of the wells that exceed the enforcement standard for the parent compound.

Mr. Vandenbrook stated that the parent compound standard is set at two. The alachlor standard is set at 20. We have very few wells in the state that exceed the standard for the parent compound.

Mr. O'Brien asked how it would affect this rule would have on the average Wisconsin farmer.

Mr. Kronenberg stated that they would lose the ability to use alachlor that would affect weed resistance.

Mr. Ela asked about the DATCP rule making process.

Mr. Vandenbrook stated it would be a couple year process.

Mr. Ela MOVED, seconded by Mr. Behnke adoption of Board Order DG-37-02, revisions to NR 140 pertaining to Groundwater Quality.

Mr. Behnke asked what if there are alternatives to using this chemical.

Mr. Poulson stated that we need to continue to look at the science and how it affects the water supply.

The motion carried unanimously by all members.

- 3.A.2. Adoption of Board Order AM-07-05, revisions to NR 465 to incorporate national emission standards for hazardous air pollutants (NESHAP) for the surface coating of plastic parts and products and for miscellaneous metal parts and products.

Bill Baumann, Section Chief, Compliance and Enforcement, Air Management Bureau stated that The US EPA promulgated the national emission standards for hazardous air pollutants (NESHAP) for the surface coating of miscellaneous metal parts and products, effective on January 2, 2004, and the NESHAP for the surface coating of plastic parts and products, effective on April 19, 2004. The US EPA amended these two NESHAP on April 26, 2004 (69 FR 22,660). The proposed rules incorporate those two standards, as amended on April 26, 2004, into the Wisconsin administrative code by creating Appendices MMMM and PPPP in ch. NR 460 and subchapters IV and V in ch. NR 465. Chapter NR 484 is also amended to incorporate by reference several test methods. Section 285.27(2), Stats., requires the Department to promulgate NESHAP into the administrative code. The Natural Resources Board has not acted on these NESHAP before.

Since the regulations are already in effect at the national level, there are no policy issues to be resolved. The surface coating of miscellaneous metal parts and products standard affects about 135 facilities statewide, and the surface coating of plastic parts and products standard affects about 34 facilities

Mr. Willett MOVED, seconded by Mr. Poulson adoption of Board Order AM-07-05, revisions to NR 465 to incorporate national emission standards for hazardous air pollutants (NESHAP) for the surface coating of plastic parts and products and for miscellaneous metal parts and products. The motion carried unanimously by all members.

- 3.A.3. Adoption of Board Order AM-06-05, revisions to NR 460 and NR 463 to incorporate national emission standards for hazardous air pollutants (NESHAP) general provisions and chromium electroplating.

Bill Baumann stated that the US EPA amended the National Emission Standards for Hazardous Air Pollutants (NESHAP) General Provisions (40CFR Part 63, Subpart A) on April 5, 2002 (67 FR 16,582), on May 30, 2003

(68 FR 32,586), and on April 22, 2004 (69 FR 21,752). The US EPA amended the NESHAP for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks (40CFR Part 63, Subpart N) on July 19, 2004 (69 FR 42,880). The proposed rules incorporate the federal amendments into the corresponding portions of the Wisconsin Administrative Code. Section 285.27(2), Stats., requires that the Department promulgate NESHAP into the administrative code. The Board adopted ch. NR 460 in 1997 and adopted amendments in 2002. The board adopted ch. NR 463 in 1997 and adopted amendments in 1999. Since the proposed amendments are already in effect at the national level, there are no policy issues to be resolved. The amendments to the general provisions could affect up to 1,000 facilities statewide, and the amendments to the chromium standard could affect up to 34 facilities statewide.

Mr. Welter MOVED, seconded by Mr. Ela adoption of Board Order AM-06-05, revisions to NR 460 and NR 463 to incorporate national emission standards for hazardous air pollutants (NESHAP) general provisions and chromium electroplating. The motion carried unanimously by all members

3.A.4. Adoption of Board Order FH-42-04, revisions to NR 326 pertaining to pier, wharves, boat shelters, boat hoists, boat lifts and swimming rafts in navigable waterways.

Mike Lutz, DNR Attorney gave a history of the public trust doctrine and how it applies to the pier rule.

Mr. Willett asked about how the Department justifies using Act 118 to create this rule.

Mr. Lutz stated that Act 118 gave the Department authority to issue general permits. To the extent that we could do activities with a general permit Act 118 gave us the authority to issue permits covering certain types of piers. We didn't rely solely on Act 118, we also used existing authority under NR 30.13.

Mr. Willett asked about the intent of Act 118 to streamline the process, not to add more permitting.

Mr. Lutz stated that the intent comes from the letter of the law first. The word streamline was never used. We streamlined the process, we may not have streamlined the amount of law that is out there.

Mr. Ela asked if one of the objectives was to achieve uniformity.

Mr. Lutz stated yes and we think that is accomplished.

Liesa Lehmann, Statewide Waterway Policy Coordinator, Fisheries Management and Habitat Bureau stated that 2003 Wisconsin Act 118, which went into effect on February 6, 2004, modified provisions in chapter 30, Statutes, governing the regulation of activities in Wisconsin's navigable public waters. The legislation establishes a new regulatory framework where activities are either authorized as exemptions; allowed under a general permit through rules adopted by Department; or reviewed under an individual permit process. The purpose of this rule is to implement the statutory changes with respect to piers, wharves, boat shelters/hoists/lifts and swimming rafts, and to establish standards for exemptions, general permits, and individual permits.

The Board Order proposes to repeal and replace NR 326 with a new rule in 4 subchapters:

-Subchapter I contains the purpose, applicability, definitions and other provisions that are applicable to the entire chapter.

-Subchapter II establishes standards for a pier or wharf to qualify for an exemption, establishes a "grandfathering" general permit for non-exempt piers that were placed prior to the effective date of Act 118, establishes 4 other general permits, and sets forth standards and review factors for piers and wharves that require an individual permit.

-Subchapter III establishes standards for boat shelters, hoists and lifts. Seasonal shelters, and permanent or seasonal hoists and lifts, are exempt from permitting if they meet specific standards. A new general permit is established for permanent boat shelters, with standards similar to those in existing NR 326, but more objective.

-Subchapter IV contains the standards for swimming rafts, which also includes water trampolines. A set of standards similar to those in existing NR 326 allow most swimming rafts to be exempt; proposal for non-exempt rafts can be authorized by an individual permit.

Mr. O'Brien asked about the diagram and putting two catwalks together and if that was acceptable.

Ms. Lehmann stated as long as it doesn't exceed 6 feet wide that is acceptable.

Mr. O'Brien asked about a pier that doesn't meet the current exemption standards, but is grandfathered in and then it is taken out in the fall; can it be put back in in the spring?

Ms. Lehmann stated yes and she explained the grandfathering process further.

Mr. Willett asked about the letter received from Speaker Gard and if this rule meets his request.

Ms. Lehmann stated she just read the letter this morning, but thinks that his concerns are met by this rule.

Mr. Ela asked about the guidelines set out by a pier planner. Does this rule meet those pier planner guidelines?

Ms. Lehmann stated that the rules codify the pier planner in the three key areas: length, width and number of boats under the exceptions.

Mr. O'Brien asked about the public comments regarding the loading dock. Was the opposition to having a loading platform at all or to the size that was proposed? Why is it extended to eight feet if there was opposition?

Ms. Lehmann stated the opposition was to having a loading platform at all. Most people felt that more than 6 feet wide is not needed to navigate the waters. It was extended to eight feet because there were some public comments stating that six feet was not big enough. Some people have eight foot across piers. We want people to be allowed

to keep what they have. She offered an amendment to replace the diagram shown on page 13 of the green sheet that was drawn incorrectly.

Dr. Thomas asked what percentage of piers would not be eligible for a permit.

Ms. Lehmann stated that of the 3.6% that require an individual permit, there are options for the landowner. They could take a section off their pier if possible. It will be a case by case basis with a site inspection.

Mr. Willett asked about public hearings.

Ms. Lehmann stated that there were six public hearings that were located in Green Bay, Eau Claire, Tomahawk, Hayward, Waukesha, and Madison.

Mr. O'Brien asked about the prohibition of a storage unit on a pier. Wouldn't it be reasonable to have a limited size storage unit for life preservers, fishing equipment, etc?

Ms. Lehmann stated it was complicated and cumbersome because how do you develop dimensions and we don't want to have to measure people's storage units.

Public Appearances

1. **Peter Murray**, Madison, Wisconsin Association of Lakes stated that he served as a stakeholder on the NR 326 advisory group. His group continues to believe that authorization for piers without permits under Section 30.12(1g)(f) and 30.13, together with the existing statutory complaint process, are sufficient to regulate piers in the state. He doesn't support the proposed authorization for piers to be placed without a permit in an Areas of Special Natural Resource Interest (ASNRI). He also doesn't support the Department grandfathering any piers without evidence to ensure these are not inconsistent with public rights.
2. **John Molinaro**, Cambridge, representing himself as a member of NR 326 Stakeholders Committee stated he supports the system of permits or at least the registration of existing piers. The general permits are like an insurance policy for pier owners. It protects the riparian owners. He disagrees with exemptions on ASNRI waters. People object to load platforms because of what takes place on those platforms (parties) rather than the environmental impact of the platform.
Mr. Ela stated that the Department states it would be administratively unmanageable to require permits for all ASNRI riparian owners. How could this be reasonable done?
Mr. Molinaro stated it would not be easy, but could be manageable. The local DNR officials are familiar with the ASNRI waters and know whether it would be a problem or not. Existing structures could be exempt, but new structures should be permitted.
3. **George Meyer**, Madison, Wisconsin Wildlife Federation stated the law states that riparian may have piers for the strict reason of having boating access to the waterway. He thinks the eight foot width and 160 square feet loading docks are excessive. There is no right of riparian owners to have decks and patios in navigable waters.
Mr. Ela asked about his opinion about ASNRI waters.
Mr. Meyer stated that they agree with the previous two speakers that these waters need more protection.
4. **Sal Troia**, Madison, Yahara Lakes Association stated that the four lakes in Madison have always had boat loading platforms. Small boat loading platforms of 120 sq. ft. should be included in the definition of an exempt pier so that riparian owners do not have to obtain a general permit.
5. **Nancy Mistele**, Madison, Yahara Lakes Association concerned about permitting, grandfathering, and notification. She gave an example of a 98 year old woman on her street who owns three lots, but doesn't have a loading platform. The next owner will not be able to have a loading dock even though everyone else on the street has a loading dock. If owners decide they want a loading platform in two years, they will not be allowed to have one because they didn't get a permit. She also thinks there will be confusion by using the term grandfathering because most people think that means that they don't have to do anything. Another issue is notification of all the riparian owners by the DNR. Is this really feasible?

Mr. Ela MOVED, seconded by **Mr. Willett** adoption of Board Order FH-42-04, revisions to NR 326 pertaining to pier, wharves, boat shelters, boat hoists, boat lifts and swimming rafts in navigable waterways.

Mr. O'Brien MOVED, seconded by **Dr. Thomas** to amend NR 326.22 (2) (f) to read:

(f) The pier or wharf may be no more than 6 feet wide, as measured across the shortest horizontal distance of any portion of the pier or wharf surface. Except in an area of special natural resource interest, a pier may have a single area as a loading platform that exceeds 6 feet in width, provided the area is located at the lakeward end of the pier, and does not exceed 120 square feet in

surface area. The loading platform shall be measured by including the main walkway of the pier, as shown in Figure 1.

Mr. Willett stated that the Department has done a marvelous job with this rule, but there isn't consensus with all the stakeholders. He doesn't want to amend it at all because he is concerned that if they do amend it the legislature will not pass it.

Mr. O'Brien stated that people are already allowed to have a loading permit. There aren't many new piers going in so riparian owners putting in new piers should be allowed to having a loading platform.

Mr. Behnke asked why the amendment is for 120 square feet and the rule is for 160 square feet.

Mr. O'Brien stated that 120 square feet is for future piers and 160 square feet is for existing, grandfathered piers.

The amendment carried 5-2, with Mr. Willett and Mr. Ela voting no.

Mr. Ela MOVED, seconded by Mr. Poulson to replace figure 1 with the amended figure presented by the Department. The motion carried unanimously by all members.

Mr. Ela MOVED, seconded by Mr. Willett to amend NR 326.23 (3) to add (g) if the pier is a shared pier, it shall be located entirely within the outer riparian rights line of the 2 contiguous properties, as determined under s. NR 326.04. The motion carried unanimously by all members.

Mr. Welter MOVED, seconded by Dr. Thomas to amend the rule to require new piers in ASNRI waters subject to general permit.

Ms. Lehmann stated that includes 22% of waters of Wisconsin and there are a lot of existing piers. It's a tracking issue. If a pier is exempt, there is no way of knowing when the pier was built. It's a moving target because new waters can be added to the list.

Dr. Thomas asked if there are any special regulations for ASNRI's.

Ms. Lehmann stated that the only thing is that exempt piers can be located.

Mr. Ela stated that this motion would only affect new piers ASNRI's.

Ms. Lehmann stated that's correct, but how does the Department determine when a new pier built versus ones that already exist under an exemption.

Mr. Ela stated this is probably more than we can handle.

Mr. Welter stated that there has been increased development on lakes and rivers across the state. Ten years from now we will be developing lakes that we would have thought were undevelopable today.

The motion failed 1-6.

The main motion carried unanimously.

Mr. O'Brien MOVED, seconded by Mr. Welter for the Board adjourned for lunch and executive session under the authority of s.19.85(1) (e) and (g) Wisconsin Statutes, for the purpose of discussing potential real estate transactions and litigation matters. A roll call vote was taken.

Mr. O'Brien - Yes Mr. Poulson – Yes Mr. Behnke – Yes Mr. Ela – Yes

Dr. Thomas – Yes Mr. Welter – Yes Mr. Willett - Yes

There was no action taken during the executive session.

3.A.5. Adoption of emergency order LE-40-05(E) and request authorization for public hearing of LE-39-05, revisions to NR 19 pertaining to Hunter Education Students Fees.

Tim Lawhern, Hunter Education Administrator, Law Enforcement Bureau stated that the language in the Recent Budget Bill authorized the department to change the regulation of student fees for Hunter Education. Instructors would be allowed to charge students a fee and to keep up to 50% (or up to \$5) of that fee to offset expenses. The remainder of the fee (at least \$5) is to be returned to the department. The department is now required to develop administrative code before the fee can be implemented. Meanwhile, the funding to reimburse instructors has been eliminated. This is a time sensitive issue, as we have many classes going on currently.

The adoption of a permanent rule will create a standard fee (\$10) which would be consistent with all of the department's safety education courses. We request authority to go to public hearing on adoption of a permanent rule. The volunteer hunter education instructors will be affected as it would allow them to collect funds to offset their expenses when the courses start as opposed to being reimbursed after they are over.

In 2000 the Board, after review of public input, adopted the proposal to increase the student fee to \$10 per student but this was overturned by the legislature. Since that time there have been no student fees for hunter education.

Dr. Thomas MOVED, seconded by Mr. Behnke adoption of emergency order LE-40-05(E) and request authorization for public hearing of LE-39-05, revisions to NR 19 pertaining to Hunter Education Students Fees. The motion carried unanimously by all members.

- 3.A.6. Request authorization for public hearing of Board Order FH-41-05, creation of NR 192, relating to Lake Monitoring Contracts and Citizen Lake Monitoring Network.

Mike Staggs, Director, Fisheries Management and Habitat Protection Bureau stated that this rule implements s. 281.68(2)(b) that allows the Department to award contracts from the lake protection grant appropriation, s. 20.370(6)(ar), for the creation and support of a statewide lake monitoring network. The rule sets forth the qualifications and procedures for a citizen to participate in the lake monitoring network and the types of monitoring activities available to them. It also describes the types of goods and services that the Department may procure through contracts for support of the network.

Mr. Welter MOVED, Seconded by Mr. Willett approval of request authorization for public hearing of Board Order FH-41-05, creation of NR 192, relating to Lake Monitoring Contracts and Citizen Lake Monitoring Network. The motion carried by all members.

- 3.A.7. Request authorization for public hearing of Board Order SS-37-05, revisions to NR 20, relating to changes in fishing regulations for Bass Lake in Washburn County and Sherman Lake in Vilas County for Fisheries Research.

Ed Emmons, Section Chief, Fish and Habitat Research, Fisheries and Habitat Protection Bureau stated that this is a change in fishing regulations on two lakes to support an ongoing fisheries research activity. This study is being conducted in cooperation with Great Lakes Indian Fish and Wildlife Commission to examine the efficacy of the current safe-harvest system for the shared tribal/angler walleye fishery in the ceded territory. The proposed regulation change would allow increased angler and tribal harvest of walleye on the two lakes.

The proposed rule change will result in two lakes with higher than 35 % harvest of adult walleye. The current safe-harvest allows for a maximum harvest of 35%. In order to test the efficacy of the 35 % harvest limit, walleye populations will need to be harvested at a higher sustained rate. Current research activities are looking at harvest across a range of harvest rates from 0 % to 35 %. This rule change will complete the study by examining harvest at these higher rates. Walleye populations within these two lakes will be monitored annually. If populations decline to extremely low levels the study will be stopped with current bag limits and harvest regimes restored to these lakes.

These lakes in combination with the other lakes (0 to 35% harvest) will allow the Fisheries Research program to develop models to evaluate the effectiveness of the current safe harvest system for walleye in the ceded territory. These results may be used to change the current safe harvest system which includes bag limits and harvest quotas for both angler and tribal fishers in the ceded territory in Northern Wisconsin.

Mr. Welter asked if it's going to be a term study.

Mr. Emmons stated that is a 10 year study.

Mr. Welter asked if these lakes are subject to spearing.

Mr. Emmons stated that they are subject to spearing and we are partnering with GLIFWC for this study.

Mr. Welter MOVED, seconded by Mr. Poulson approval of request authorization for public hearing of Board Order SS-37-05, revisions to NR 20, relating to changes in fishing regulations for Bass Lake in Washburn County and Sherman Lake in Vilas County for Fisheries Research. The motion carried unanimously by all members.

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

- 3.B.1. Adoption of Board Order FH-22-05, revisions to NR 20, pertaining to Lake Winnebago system sturgeon spearing rules.

Joe Hennessy, Natural Resources Staff Specialist, Fisheries Management and Habitat Protection Bureau stated that at the December Natural Resources Board meeting, an emergency rule was approved to allow the option of closing the 2005 Winnebago System sturgeon spearing season at the end of the first day if the total allowable harvest is exceeded on that first day. The Natural Resources Board expressed concern that this management option not be a permanent solution and so the Department is looking for other options for future regulations that might extend the season while maintaining acceptable harvest rates.

The regulations will strive to control sturgeon exploitation rates, while continuing to maintain an open access fishery. Harvest levels have been maintained at acceptable levels, however in recent years the season has been cut short due to spearkers reaching harvest limits in short time periods. Five Public meetings and two meetings with

the Winnebago Citizen's Sturgeon Advisory Committee in the three weeks following the close of the 2005 sturgeon spearing season reaffirmed the most critical issues to be: 1) maintaining the sturgeon harvest at an acceptable level, 2) maintaining an open fishery on Lake Winnebago, 3) addressing the excessive pressure on the Upriver Lakes, and 4) ensuring more regular long spearing seasons.

This rule proposes the following changes to Lake Winnebago system sturgeon spearing rules: 1) Upriver Lakes: create a random-permit drawing system for an annual sturgeon spear fishery on the Upriver Lakes beginning in 2007. 2) "Fast Start" Season 100% Closure Trigger: beginning in 2006, allow the spearing season to be closed at the end of a spearing day should any one of the three harvest caps (juvenile females, adult females, males) be reached or exceeded that day. 3) "Slow Finish" Season 90% Closure Trigger: beginning in 2006, increase the season closure trigger from 80% to 90%.

Public Appearance

Randy Baumann, Menasha, AFLCIO, Conservation Committee stated that he supports this rule proposal. He agrees with the group license option because it allows families to fish together. He asked the Board to pass the proposed rule.

Mr. Hennessy proposed an amendment changing the word "season" to "license" in NR 20.105(1).

Mr. Willett MOVED, seconded by Mr. Welter adoption of Board Order FH-22-05, revisions to NR 20, pertaining to Lake Winnebago system sturgeon spearing rules as amended. The motion carried unanimously by all members.

3.B.2. Adoption of Emergency Order FR-38-05(E) and request authorization for public hearing of Board Order FR-36-05, revisions to NR 46 and NR 47, pertaining to changes to the Managed Forest Law and Forest Landowners Grant Programs.

Carol Nielsen, Tax Law Manager, Forest Management Bureau stated that revisions in administrative rules are proposed to reflect the changes made to Subch. VI of Ch. 77 Wis. Stats. in 2005 Wisconsin Act 25 and to implement administrative changes in the Wisconsin Forest Landowner Grant Program (WFLGP) to facilitate the managed forest law (MFL) changes.

2005 Wis. Act 25 (05/07 budget) removed the requirement that the department be responsible to prepare all MFL management plans requested and institutes a plan preparation fee for any plan the department agrees to prepare. The goal is to refer more work to Certified Plan Writers (CPW) and free up DNR Forester time for other high priority work. To accomplish this, the following changes are proposed:

- * Establish a process for referring plans and determining which plans the department agrees to prepare (e.g., no CPWs available) and create a formula for the plan preparation fee (PPF) based on current market rates.
- * Modify the deadline for a draft plan (required for the May 15th application deadline) from April 1 to January 31 and modify CPW certification maintenance requirement to include submission of plan preparation cost data annually to be used in the PPF formula.
- * Revise the WFLGP to cap cost sharing to 50% of available funds for plan preparation and 10% of available funds for priority two practices. This is to ensure that at least some funding (40%) will remain available for other priority one practices including tree planting and timber stand improvement.
- * Modify the language to allow cost sharing of MFL mandatory practices which meet other cost sharing requirements. Remove the assignment of pay provision which has had little use.

Mr. Ela MOVED, seconded by Mr. Poulson adoption of Emergency Order FR-38-05(E) and request authorization for public hearing of Board Order FR-36-05, revisions to NR 46 and NR 47, pertaining to changes to the Managed Forest Law and Forest Landowners Grant Programs. The motion carried unanimously by all members.

3.B.3. Request authorization for public hearing of Board Order WM-31-05, revisions to NR 10 and NR 45, pertaining to state park small game and turkey hunting.

Kurt Thiede, Wildlife Biologist, Wildlife Management Bureau stated that this rule order removes sunset dates from chapter NR 10, Wis. Adm. Code, which will allow the hunting of small game, upland game birds, and migratory birds to continue at Mill Bluff and Mirror Lake state parks. The rule also discontinues the hunting of small game, upland and migratory game birds at Newport and Governor Dodge state parks. Finally, the rule creates three new state park turkey management zones. Willow River, Interstate and Newport state parks will be included in the department's annual turkey management permit issuance system. In addition, the Master Plans for these park properties will need to be amended.

Mr. Welter asked where the hearings are going to be held.

Mr. Thiede stated that last time they were held near the properties.

Mr. Welter suggested that these hearings also be held near the properties.

Mr. Behnke MOVED, seconded by Mr. Willett approval of request authorization for public hearing of Board Order WM-31-05, revisions to NR 10 and NR 45, pertaining to state park small game and turkey hunting. The motion carried unanimously by all members.

3.B.4. Approval of Modification to the Mid Kettle Moraine Project.

Steve Miller, Director, Facilities and Lands Bureau stated that in March 2004 the Board approved the "Implementation Strategy for the Land Legacy Report" The Kettle Moraine Region was one of a few places identified for potential future or expanded protection efforts. Department staff have analyzed this area for further feasibility study and are providing the Board with their recommendations.

Jim Morrissey, Regional Program Manager, Southeast Region stated that in developing these recommendations the Department worked closely with the Mid-Kettle Partners Group an active coalition of organization and local governments with a common interest in protecting the best remaining natural and scenic areas of the Mid-Kettle. The recommendations of the Department are:

1. No major expansion of the Kettle Moraine State Forest Units at this time, but instead consideration of parcels outside the established acquisition boundaries on a case by case basis.
2. Not to conduct a feasibility study of the Southern Kettle Moraine area at this time.
3. emphasis on land protection in the Mid-Kettle area as follows: a.) continue to place a strong focus on filling the gaps in the Ice Age Trail in the Mid-Kettle, b.) continue to focus on protecting key natural areas in the Mid-Kettle and, c.) seek opportunities to establish recreation nodes along the Ice Age Trail with a special emphasis in three primary areas: the Polk Kames/Kettle Hills, the Holy Hill to Loew Lake corridor and the Thompson Swamp and Hults Bog.

Public Appearance

1. **Paul Hayes**, Cedarburg, Mid Kettle Moraine Partners Group gave a history of the partners group and the formation of the Mid Kettle Moraine Area. He stated that their group supports this proposal before the Board.

Mr. Welter MOVED, seconded by Mr. Ela approval of Modification to the Mid Kettle Moraine Project. The motion carried by all members.

3.B.5. Land Acquisition, Loon Lake Wildlife Area, Barron County

Mr. Welter MOVED, seconded by Mr. Ela approval of Land Acquisition, Loon Lake Wildlife Area, Barron County. The motion carried unanimously by all members.

3.B.6. Land Acquisition, Ice Age Trail, Dane County

Mr. Ela MOVED, seconded by Mr. Welter approval of Land Acquisition, Ice Age Trail, Dane County. The motion carried unanimously by all members.

3.B.7. Land Acquisition, Ice Age Trail, Waushara County

Mr. Willett MOVED, seconded by Mr. Welter approval of Land Acquisition, Ice Age Trail, Waushara County. The motion carried unanimously by all members.

3.B.8. Land Acquisition, Lakes Coulee Wildlife Area, Trempealeau County

Mr. Steffes stated that the boundary isn't clear. He offered to check with his staff and bring it back next month.

Mr. Poulson MOVED, seconded by Mr. Ela to defer Land Acquisition, Lakes Coulee Wildlife Area, Trempealeau County. The motion carried unanimously by all members.

3.B.9. Land Acquisition, Governor Knowles State Forest, Burnett County

Mr. Willett MOVED, seconded by Mr. Behnke approval of Land Acquisition, Governor Knowles State Forest, Burnett County. The motion carried unanimously by all members.

3.B.10. Land Acquisition, Central Wisconsin Grassland Conservation Area, Portage County

Mr. Willett asked why we are buying from another form of government. He believes that the county should take some stewardship responsibility.

Richard Steffes stated he would take this back to the county and renegotiate.

Mr. Willett MOVED, seconded by Mr. Poulson to *defer* Land Acquisition, Central Wisconsin Grassland Conservation Area, Portage County. The motion carried unanimously by all members.

3.B.11. Easement Acquisition, North Branch Milwaukee River Wildlife and Farming Heritage Area, Washington County

Mr. Willett MOVED, seconded by Mr. Poulson approval of Easement Acquisition, North Branch Milwaukee River Wildlife and Farming Heritage Area, Washington County. The motion carried unanimously by all members.

3.B.12. Land Acquisition, Straight River Wildlife Lakes Wilderness Area, Polk County

Mr. Willett MOVED, seconded by Mr. Ela approval of Land Acquisition, Straight River Wildlife Lakes Wilderness Area, Polk County. The motion carried unanimously by all members.

3.B.13. Land Acquisition, Governor Tommy G. Thompson Centennial Park, Marinette County

Mr. Willett MOVED, seconded by Mr. Ela approval of Land Acquisition, Governor Tommy G. Thompson Centennial Park, Marinette County. The motion carried unanimously by all members.

3.B.14. Donation, Lake Mills Wildlife Area, Jefferson County

Mr. Welter expressed the Board's appreciation of this generous donation by the Audubon Society.

Mr. Welter MOVED, seconded by Mr. Ela acceptance of donation, Lake Mills Wildlife Area, Jefferson County. The motion carried unanimously by all members.

3.B.15. Donation, Dells of the Wisconsin River Natural Area, Adams County

Dr. Thomas expressed the Board's appreciation to Ruthe Badger and the South Central Regional Staff for their creative work on this project.

Mr. Welter MOVED, seconded by Mr. Ela acceptance of donation, Dells of the Wisconsin River Natural Area, Adams County. The motion carried unanimously by all members.

3.B.16. Donation, Ice Age Trail, Washington County

Mr. Willett MOVED, seconded by Mr. Poulson acceptance of donation, Ice Age Trail, Washington County. The motion carried unanimously by all members.

3.B.17. Land Acquisition, State Wildlife Areas, Shawano County

Mr. Willett MOVED, seconded by Dr. Thomas approval of Land Acquisition, State Wildlife Areas, Shawano County. The motion carried unanimously by all members.

4. Citizen Participation (1:00 p.m.)

4.A. Citizen Recognition

4.B. Citizen Participation

4.B.1. **Cindy Williams**, Watertown, discussed the Watertown Tire Fire. She stated that she lives less than .7 miles from the Watertown Tire Recycling Facility where a fire broke out on July 19, 2005. She thinks the DNR and Tom Springer of Watertown Tire Recycling Facility are responsible for the fire. The DNR was the only agency that had the means to curtail the activities. She asked that the DNR doesn't renew Watertown Tire Recycling Facility's license required to continue operations. The facility has caused damage to our air, water, soil, property values, and mental and physical health.

4.B.2. **John Cummings**, Grafton discussed crossbow hunting in Wisconsin. He believes the rule should be changed. Currently crossbows are not legal to use except by disabled hunters and resident hunters 65 years of age or older. He believes that crossbow hunting should be allowed by all hunters and that the current rule is unconstitutional under equal protection in the U.S. Constitution applies to this rule.

5. Board Members' Matters

- 5.A. Mr. Behnke stated he has received many calls about CWD found on a game farm in Portage County. This is DATCP's jurisdiction. He asked for clarification about why DATCP isn't moving faster. He asked the Department to contact DATCP and ask where they are at and what the outcome might be. His second issue is regarding Big Sissabagamma Lake in Sawyer County pan fish regulations. He asked the Department to come back with recommendation regarding that lake. His third issue is regarding Smelt in Green Bay. Pete LeClair wrote him a letter stating that the Smelt population is growing rapidly. He asked the Department to provide information why there is a difference between Michigan and Wisconsin regulations and to review rules.
- 5.B. Mr. Welter stated that at the last meeting he asked the Department to provide information about the Cooke Creek and Little Plover River dewatering.
Mary Schlaefer, Executive Assistant stated that a confidential memo was sent to the Board and she provided him with a copy.
Mr. O'Brien stated he doesn't think that is the correct way to handle it.
Ms. Schlaefer stated that it is labeled legal advice to the Board and was not noticed as part of the meeting packet.
Mr. Welter commended the wardens and hunter education instructors for efforts to contact the Hmong community and work with them during the hunting season this fall. He requested that cool heads need to prevail this hunting season when it comes to trespass and other issues in the woods.
- 5.C. Steve Willett presented a resolution on Landfill owner financial responsibility that states:
 "Relating to the motion that was approved at the March 23, 2005 Board meeting, I am requesting reconsideration of the timeframe for a proposed rule package to address ongoing owner financial responsibility at landfills, from February 2006 to March 2007, with updates to the Board in December 2005 and March, August, and December 2006." He requested that it be noticed for adoption of the next meeting. His second issue is the invasive species. He requested that the Department identify which lakes north of Hwy 64 are suffering from invasive species and close public access to those lakes.
- 5.D. Chris Thomas stated that 8 of the 10 new LE wardens were her students. She is proud of the relationship between the UW-Stevens Point and the Department in training these wardens together. Secondly, she stated Wisconsin is losing hunters at an alarming rate. For every 100 hunters that Wisconsin loses, we are only recruiting 54 new hunters. She would like to be involved in any discussions about recruitment efforts.
- 5.E. Dan Poulson asked about Hunter Education courses in other programs such as 4-H and working with those youth groups during this time of tight budgets.
- 5.F. Gerald O'Brien asked that the Board receive written comments from public participation speakers ahead of time.

6. Special Committees' Reports6.A. Report and recommendation from the Endangered Resources Subcommittee

Mr. Welter stated that the committee was developed to determine a way to decide which endangered resources plan should be reviewed by the NRB. Mr. Ela developed a framework to give guidance to the staff about which plans should be brought before the NRB.

Jonathan Ela distributed the framework to the Board and explained it.

"The Natural Resources Board directs the Department bring before it for adoption policies devised for the protection of individual species in the following circumstances.

1. There is substantial statutory discretion for the goals to be achieved by the protection program, or there is little discretion for the goals but a number of broadly distinct policy options for attaining those goals are available, and one or more of the following circumstances apply:

- a. The choice of goals or policy options reflects different social value judgments;
- b. The choice of goals or policy options would have significantly different environmental, social or economic consequences;
- c. The choice of goals or policy options would have significantly different impacts on the expenditure of departmental resources.

2. In borderline cases the Department should bring the matter to the Board as an informational item, so the Board can then choose whether it wishes a more formal involvement."

Gerald O'Brien stated that the Butler Garter Snake fit under "b" according to this framework. He asked if this was being brought before the Board as policy change.

Mr. Welter MOVED, seconded by Mr. Poulson approval of report and recommendation from the Endangered Resources Subcommittee.

Tim Andryk, DNR Attorney stated it is consistent with historical approaches.

The motion carried unanimously by all members.

- 7. Department Secretary's Matters
- 7.A. Retirement Resolutions
- 7.A.1. Gerald D. Stair
- 7.A.2. Tom D. Smith
- 7.A.3. Barbara A. Dukerschein
- 7.A.4. Randal G. Rossing
- 7.A.5. Dean G. Packard

Mr. Behnke MOVED, seconded by Mr. Welter approval of retirement resolutions. The motion carried unanimously by all members.

- 7.B. Donations
- 7.B.1. The Natural Resources Foundation will donate \$7,000 to the Endangered Resources Program to survey and manage raptors on the list of Species of Greatest Conservation Need.

Mr. Welter MOVED, seconded by Dr. Thomas approval of donation of \$7,000 to the Endangered Resources Program to survey and manage raptors on the list of Species of Greatest Conservation Need. The motion carried unanimously by all members.

- 7.B.2. The Sheboygan County Conservation Association will donate \$5,000 to be used to send DNR staff to the annual The Wildlife Society (TWS) Conference.

Mr. Behnke MOVED, seconded by Mr. Ela approval of donation of \$5,000 to be used to send DNR staff to the annual The Wildlife Society (TWS) Conference. The motion carried unanimously by all members.

- 7.B.3. Sturgeons for Tomorrow will donate \$5,000 to be used to purchase forage at the Wild Rose State Fish Hatchery.

Mr. Behnke MOVED, seconded by Mr. Willett approval of donation of \$5,000 to be used to purchase forage at the Wild Rose State Fish Hatchery. The motion carried unanimously by all members.

- 8. Information Items
- 8.A. Air, Waste, and Water/Enforcement
- 8.B. Land Management, Recreation, and Fisheries/Wildlife
- 8.B.1. Commercial Fishing harvest limits update.

Bill Horns, Great Lakes Fisheries Coordinator, Fisheries Management and Habitat Protection Bureau stated that in October of 1998 the Natural Resources Board asked for periodic reviews of harvest limits for all commercial fish species in Wisconsin waters of Lake Michigan and Lake Superior. These reviews also provide an opportunity to give the NRB some advance notice about likely future changes in harvest limits. Harvest limit adjustments are anticipated for yellow perch from Green Bay and lake trout from Lake Superior. Representatives of the two Commercial Fishing Boards will be present to address the NRB during this presentation, pursuant to their statutory charge to recommend harvest limits

Mr. Behnke asked about the Michigan DNR data and why their harvest numbers and population estimates are so much higher than ours.

Mr. Horns stated that Michigan allows daytime fishing and we do not. We know that over the past decade and a half there has been a decline in the smelt population. We are researching the numbers in Green Bay.

Dr. Thomas stated that these Michigan numbers don't necessarily mean that the population is increasing, just that the harvest is increasing.

Charlie Hendrickson, Bailey's Harbor, Great Lakes Commercial Fishing Committee gave a fish population and harvest report. He stated that they need a perch fish biologist to give a presentation to the commercial fishing board.

Mark Maricque, Green Bay, Great Lakes Commercial Fishing Committee stated it is hard to comment on the perch population without having any hard data from Department staff. He has concerns about the computer model that the Department is using and the monitoring of 1 year old fish. He thinks fishing is as good as he has ever seen it. He would like the Department to partner with the commercial fishermen to conduct research on fish populations.

The meeting adjourned at 4:13 pm.