

MARCH 16, 2010

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## NATURAL RESOURCES BOARD

### MINUTES

The regular meeting of the Natural Resources Board was held on Tuesday, March 16, 2010 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 2:29 p.m.

#### ORDER OF BUSINESS

1. Organizational Matters

1.A. Calling the roll

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

1.B. Approval of agenda for March 16, 2010

**Dr. Clausen MOVED approval, seconded by Dr. Thomas. The motion carried unanimously.**

2. Ratification of Acts of the Department Secretary

2.A. Real Estate Transactions

**Mr. Ela MOVED approval, seconded by Mr. Welter. Mr. Ela abstained from voting on PR 40074 - The Nature Conservancy. The motion carried unanimously.**

3. Action Items

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

3.A.1 2010 Registered Laboratory of the Year Awards

**David Webb**, Environmental Science Services Chief, stated this is the 15<sup>th</sup> year the Department has recognized outstanding labs. These labs faithfully serve their communities and help the Department do its job by making every effort to produce high quality data. These are great public servants and it is great to recognize a few.

**Small Registered Facility Award:** City of Waupaca Wastewater Treatment Facility

**Secretary Frank** presented the award to the Waupaca WWTF and congratulated them on this achievement.

**Jeff Dyer**, Lab Supervisor and Main Analyst and **John Edlebeck**, Director of Public Works thanked the Department for this award.

**Large Registered Facility Award:** The Wolf Treatment Plant in Shawano

**Secretary Frank** presented the award to the Wolf Treatment Plant and congratulated them on this achievement.

**Jerry Weisnicht**, SLSD/WTP Administrator, **Dave Hartmann**, Lab Supervisor/Chief Operator, **John Collins**, Lab Analysis/Operator, and **Dustin Beyer**, Lab Analysis/Operator accepted the award and thanked the Department. They also thanked Dan Tschirgi, Lab Analyst/Operator for holding down the fort for them while they accepted the award.

**Mr. Ela** congratulated both facilities for their outstanding efforts in taking care of the waters of Wisconsin.

**INFORMATION ITEM – NO ACTION WAS TAKEN**

- 3.A.2 Request approval of the FY 2011 Laboratory Certification Program Fee Adjustment  
**David Webb**, Environmental Science Services Chief, stated fees assessed to participating laboratories are distributed equitably based on a formula. The fee schedule uses relative value units (RVU) assigned to administrative tasks, applications, technologies and analytical classes based on their difficulty. The cost of RVU for FY 2011 will be \$57.00. This is the number that Department customers are interested in since this drives their fees. The FY 2011 fee adjustment is based on: the budget is \$45, 664 below last fiscal year's budget; the cost of an RVU is \$0.50 below last fiscal year's cost; and the budget is \$139,543 below the program's authorized spending authority. He requested the Board approve the program's FY 2011 fee adjustment proposal.

**Dr. Clausen MOVED approval, seconded by Dr. Thomas. The motion carried unanimously.**

- 3.A.3 Request Adoption of Board Order WT-15-09, Watershed Management Housekeeping Rule Revisions to chs. 102, 103, 105, 106, 108, 110,114, 200, 203, 205, 210, 214, 299, 328, 341, and 812 NOTE: Moved from the February 2010 agenda.  
**Susan Sylvester**, Watershed Management Permits Chief, stated the housekeeping rule package is to update many rules to correct typographical errors or common housekeeping changes to keep rules current. These changes reflect current practice and are not substantial. One main force driving this rule effort is the need to codify the requirement to submit applications and reports to the bureau electronically. Many other changes in this order were also made to comply with federal regulations. She requested the Board adopt Board Order WT-15-09.

Discussion followed on the timeline to rewrite chs. 106 and 110.

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

**Mr. Ela** suggested, when feasible, comments be attributed in the public participation summaries, particularly when a federal or other public agency is commenting.

**The motion carried unanimously.**

- 3.A.4 Request Authorization for Public Hearing for Board Order AM-06-09, proposed rules affecting ch. NR 433 pertaining to the implementation of Best Available Retrofit Technology (BART) requirements  
**Larry Bruss**, Regional Pollutant & Mobile Source Section Chief, stated the one substantive modification proposed in this rule package is to extend the final allowed compliance date to December 31, 2015. The extended final compliance date provides additional time for sources which are undergoing significant installations of air pollution control equipment, particularly in the case of a source implementing controls for multiple pollutants or emissions units. The Department also proposed to clarify and to provide additional flexibility to the averaging provisions in the rule. He requested the Board authorize public hearings for Board Order AM-06-09.

Discussion followed on the averaging provisions in the rule and if the extension of the compliance date affects other air rules

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

Discussion followed on the implementation of the Clean Air Interstate Rule (CAIR).

**The motion carried unanimously.**

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3.A.5 Request Authorization for Public Hearing for Board Order WT-25-08, revisions to NR 102 and NR 217 related to phosphorus water quality standards criteria and WPDES permit provisions for phosphorus

**Russ Rasmussen**, Watershed Management Bureau Director, stated the proposed rule package proposes numeric phosphorus water quality standards criteria for lakes and streams, as required by the Environmental Protection Agency (EPA). If the Department does not adopt phosphorus criteria, EPA has the authority to do so for Wisconsin. The rule package also includes procedures for using the phosphorus criteria to develop water quality based effluent limitations for publicly and privately owned wastewater treatment facilities, and implementing those limitations through Wisconsin Discharge Pollutant Elimination System (WPDES) permits. Various options included in these permit procedures are total maximum daily loads (TMDL) derived limitations, compliance schedules, interim limitations and variances. He requested the Board authorize public hearings for Board Order WT-25-08. **(PowerPoint)**

Discussion followed on the availability of funds, impact of rule on reservoirs, emerging technologies, cost sharing, and farm related issues in certain watersheds.

**Secretary Frank** stated that the problem with certain farms in certain watersheds is that money has been available to them but these farmers had not taken advantage of the funds. Technology is evolving quickly and farmers are now looking at digesters and other options. If appropriate rules are in place, with timing, technology will follow.

Discussion followed on adaptive management and how unknown future costs affect industry.

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

**Mr. Cole** and **Mr. Ela** complimented Jim Bauman and Russ Rasmussen for an excellent briefing.

**The motion carried unanimously.**

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

3.B.1 Request Adoption of Modifications to Board Order WM-16-09 and Emergency Board Order WM-18-10(E), revisions to NR 10 relating to white-tailed deer population goals

**Keith Warnke**, Big Game Specialist, stated the proposal increases the overwinter goals for deer per square mile of range in 43 management units and a decrease in 2 units. This proposal has been revised to reflect changes made in response to a legislative request for modifications. Under the Department's initial proposal, increases had been proposed for 13 units and decreases in 2. Recommendations are listed in the rule package. The proposed adoption of an identical emergency order would ensure that the provisions of both rules would be in effect by April 2010, and can be used as the basis for the 2010 deer hunting season framework. He requested the Board approve Board Order WM-16-09 and Emergency Board Order WM-18-10(E). **(PowerPoint)**

Discussion followed on the possibility of having a large herd if herd control is cut back, would herd control be sufficient to manage populations at these goals, the need for an emergency rule, when the rule would be in effect, justification of the large increases in certain DMUs and if the Department is inviting a population explosion in those units, how these large increases in certain units will be managed, why some units adjacent to the CWD zone have increases, the stakeholder process and legislative review, and if this rule proposal is a Type II action requiring an Environmental Analysis (EA).

**Tim Andryk**, Staff Attorney, stated the Department did an Environmental Analysis in 1995 that evaluated several alternatives. In terms of this rule proposal, it is close to the 1995 rule.

**Dr. Clausen** requested a copy of the 1995 Environmental Analysis.

**Public Appearances**

**Ed Harvey**, Waldo, Wisconsin Conservation Congress (WCC) Chair thanked Chair Ela for allowing him to testify on this item. He stated the position of the Congress has not changed since the original stakeholder panel review process. WCC recommends increases in Southern Farmland units 72, 73B, 73D, and 74B to 25 deer per square mile of deer range. WCC also recommends that the proposed reductions in units 68B and 49A not be included in the modified rule. (Handout)

Discussion followed on details to the legislative modifications and if the Department can take alternative actions within the next three years if intervention is necessary.

**Ms. Wiley MOVED approval, seconded by Mr. Ela.**

Discussion followed on the proposed increase in population goals in DMUs near the CWD area.

**Mr. Welter MOVED to amend, seconded by Dr. Clausen for Unit 74a to remain at 20, Unit 62a to remain at 25, Unit 61 to remain at 20, and Unit 59b to increase to 20.**

Discussion followed on the need for public input.

**Mr. Welter MOVED to remove Unit 62a from the amendment. Dr. Clausen agreed as second to remove Unit 62a.**

**The motion to amend failed in a roll call vote of 3-3.**

**David Clausen – yes**

**Preston Cole – no**

**Jonathan Ela – no**

**Gary Rohde – absent**

**John Welter – yes**

**Christine Thomas – yes**

**Jane Wiley – no**

**The original motion carried in a vote of 4-2**

**David Clausen – no**

**Preston Cole – yes**

**Jonathan Ela – yes**

**Gary Rohde – absent**

**John Welter – no**

**Christine Thomas – yes**

**Jane Wiley – yes**

3.B.2 Request Authorization for public hearings on Board Order LF-05-10, revisions to Ch. NR 45, governing public use of Department properties

**Mike Lutz**, General Counsel Section Chief, stated that a number of the changes being proposed are for the purpose of clarifying, simplifying or improving existing rules. There are also a number of rules being proposed for visitor safety and resource protection purposes. Some of these proposals would apply to all department properties, and others are specific to individual properties where specific safety or other concerns have been identified. There are also a number of proposals to increase certain camping and other use fees for state parks and forests. He requested the Board authorize public hearings on Board Order LF-05-10.

Discussion followed on the definition of trails and routes, if establishing routes could affect recreational immunity, and if berry picking is allowed in natural areas.

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

**3.B.3 – 3.B.4**

**Mr. Ela** requested the land items be taken in aggregate.

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3.B.3 Easement Acquisition and Donation, Statewide Wildlife Habitat Area, Rock County **(Handout)**

3.B.4 Land Acquisition & Project Boundary Modification, New Munster Wildlife Area, Kenosha County

**Dr. Thomas MOVED approval, seconded by Mr. Welter on 3.B.3-Easement Acquisition and 3.B.4-Donation, Statewide Wildlife Habitat Area, Rock County and Land Acquisition & Project Boundary Modification, New Munster Wildlife Area, Kenosha County. The motion carried unanimously.**

4. Citizen Participation – 1:00 p.m.

4.A. Citizen Participation  
None

5. Board Members' Matters

**Dr. Thomas** reminded staff to forward federal and state legislation on the Great Lakes Compact to the full Board.

5.A. Change in operating procedures to allow for the elimination of and potential replacement for Operating Committees

**Mr. Ela** stated this item was for discussion only, with action to be taken at the April, 2010, meeting. Proposed changes are to be sent to Board Liaison. **(Handout)**

Discussion followed on the three year term limit for Chair, separation of powers on out-of-state travel, allowing one person per organization to testify, and origination of the title “issue coordinator”.

6. Special Committees' Reports  
None

7. Department Secretary's Matters

**Secretary Frank** briefed the Board on the legislative schedule and their continued work on the Clean Energy Jobs Act, the bill that implements Governor Doyle's Global Warming Task Force recommendations. He then updated the Board on two newly introduced bills. Senator Miller and Representative Black in protecting Wisconsin's groundwater and Senator Holperin's bill that bans feeding of deer from Labor Day through the last day of the gun deer season. The Stewardship Rule (NR 52) is before the Senate Environment Committee and will then go before the Assembly Committee in a week or so. Governor Doyle had recently signed into law Wisconsin Act 145 which bans the use of bisphenol A in baby bottles and cups.

He then distributed a letter he sent to Paul Schmidt, Migratory Birds Assistant Director of the U.S. Fish and Wildlife Service (F&WS) requesting flexibility for more opportunities for waterfowl hunters. **(Handout)**

Lastly he discussed the F&WS initiative to set up a Landscape Conservation Cooperative (LCC). Wisconsin is grouped in the Great Lakes region along with several Canadian Provinces. The steering committee will include state heads. F&WS will take a collaborative look at conservation challenges. The Department will keep the Board updated.

7.A. Retirement Resolutions

7.A.1 Sherry L. Sanford

7.A.2 James E. Friedrich

7.A.3 Michael E. DeBrock

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

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7.B. Donations

- 7.B.1 The Natural Resources Foundation will donate \$198,500 in support of Natural Areas Management, Endangered and Threatened Species, Community Conservation, and Education  
**CORRECTED:** error on green sheet

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

- 7.B.2 The Friends of Horicon Marsh International Education Center, Inc. will donate up to \$100,000 to support the development of an approved concept design plan for exhibits at the Horicon Marsh International Education Center

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

- 7.B.3 Willow River OWLs will donate up to \$20,000 to pay the salary of a limited term environmental educator for 2010

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

- 7.B.4 The Natural Resources Foundation of Wisconsin will donate \$12,750 in support of the Migratory Bird Stopover Project managed by the Bureau of Endangered Resources  
**DELETED**

- 7.B.5 Ducks Unlimited and Dow AgroSciences will donate sunflower seed valued up to \$10,000 to provide increased hunting opportunities for bird hunters in Wisconsin

Discussion followed on the planned use of the seed.

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

- 7.B.6 The Natural Resources Foundation of Wisconsin will donate \$6,400 to help conduct marshbird surveys statewide

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

8. Information Items

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

8.A.1 Green Tier

**Mark McDermid**, Cooperative Environmental Assistance Bureau Director and Green Tier Advisors **Art Harrington**, LaFollette, Godfrey and Kahn, and **Margaret Krome**, Michael Fields Institute, presented this item to the Board.

**Mr. McDermid** gave an abbreviated chronology of Green Tier. Green Tier invites organizations and businesses to voluntarily become a part of the ideal state for growing a green bottom line as a sustainable force for environmental good. He listed the obligations and expectations of participation and gave examples of company participation and results. **(PowerPoint and Handout)**

Discussion followed on the meaning of qualified and how the program measures results/outcomes from company participation.

**Mr. Harrington** gave a brief perspective on the uniqueness of the Green Tier Program, the importance of the certifications, and how it keys in with a sustainable economy. He has seen numerous manufacturer applications but not so for the service industry. He stated the law firm he works for is in the process of applying for Green Tier certification.

**Ms. Krome** stated she works in sustainable agriculture and is a passionate believer in Green Tier. Green Tier allows organizations to find profits from cleaning up their acts and making themselves transparent. Getting them engaged takes time. She is very proud of the fact that the program and advisory committee have solicited input from the environmental community. In doing so they found a common cause. The process has been very constructive.

Discussion followed on what types of businesses/organizations have the most opportunity to get involved in the next five to ten years, if sustainability is being engrained in the Department's Leadership Academy program, and the grant relationship with participating companies.

**Mr. Cole** asked staff to consider allowing points as an incentive to Green Tier participants that are applying for grants.

**INFORMATION ITEM – NO ACTION WAS TAKEN**

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

8.B.1 Wolf River Boating Safety Issues

**Jeff Knorr**, Conservation Warden, gave an overview of boating safety challenges on the Wolf River. He compared how boating has changed from the past to the present. He then discussed the major issues on the river related to speed, congestion, conflicting uses, wakes, and noise. He reviewed enforcement and education efforts but stated that enforcement efforts have been hampered by few applicable laws. **(PowerPoint and Handout)**

Discussion followed on the depth and the width of the river in the area concerned, if some of the users are being driven away, issues related to enforcement of imprudent speed, the approximate amount of money boating brings to the area's economy, why local regulations have not been created, if the Department has authority to create and enforce local speed limit rules, if alcohol consumption is an issue, that Waupaca County courts are waiving Department citations written for imprudent speed, and if the Department could proceed with rule making.

**Secretary Frank** stated that the wardens have done a tremendous job to protect safety on this river and thanked them for their work. Public safety is at issue here. He stated that anytime you deal with statute, you need someone in the legislature to work with. There are also multiple jurisdictions on the river. A safety district is needed for towns to come together to pass something enforceable. The Department is open to ideas. He will keep the Board updated.

Discussion followed on the public trust concern.

**INFORMATION ITEM – NO ACTION WAS TAKEN**

**Dr. Clausen MOVED, seconded by Mr. Cole to adjourn the meeting. The motion carried unanimously.**

\*\*\*The meeting adjourned at 2:29 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.**