

NATURAL RESOURCES BOARD

MINUTES

The regular meeting of the Natural Resources Board was held on Wednesday, October 24, 2007 in Room G09, State Natural Resources Building (GEF 2), Madison, Wisconsin. The meeting was called to order at 10:00 a.m. for action on items 1-7. The meeting adjourned at 4:10 p.m.

ORDER OF BUSINESS

1. Organizational Matters

1.A. Calling the roll

David Clausen – present	Preston Cole – present
Jonathan Ela – present	Gerald O’Brien – present
John Welter – present	Christine Thomas – present
Jane Wiley – present	

Dr. Thomas, on behalf of the members, welcomed Preston Cole to the Board. Mr. Cole is the Environmental Services Superintendent of the City of Milwaukee’s Department of Public Works.

1.B. Approval of minutes from August 14-15, 2007

Mr. O’Brien MOVED, seconded by Mr. Welter approval of the minutes as presented. The motion carried unanimously.

1.C. Approval of agenda for October 24, 2007

Matt Frank, DNR Secretary, requested permission to introduce the VHS agenda items for the Board, and also to update the Board on the budget during the Department Secretary’s Matters. **The Board** approved Secretary Frank’s request.

Mr. O’Brien MOVED, seconded by Mr. Ela approval of the agenda for October 24, 2007. The motion carried unanimously.

2. Ratification of Acts of the Department Secretary

2.A. Real Estate Transactions

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 Request adoption of Board Order AM-08-07, incorporation of the national emission standards for hazardous air pollutants (NESHAP) for the surface coating of paper and other web into ch. NR 466.

William Bauman, Compliance and Enforcement Section Chief, Air Management Bureau, stated the proposed rule will regulate the emissions of hazardous air pollutants from facilities which are major sources of federal HAPs and which conduct surface coating of paper and other web. The proposed rule is already in effect at the national level and that there are no policy issues to be resolved nor controversy expected. He requested the Board adopt the proposed rule.

Mr. Ela MOVED, seconded by Dr. Clausen approval of the Request for adoption of Board Order AM-08-07, incorporation of the national emission standards for hazardous air pollutants (NESHAP) for the surface coating of paper and other web into ch. NR 466. The motion carried unanimously.

- 3.A.2 Request adoption of Board Order AM-12-07, pertaining to the revision of chs. NR 400, 406, 407, 410, Wisconsin Administrative Code, incorporating changes in Federal Definitions, Permit Requirements and Portable Source Relocation Requirements
Jeff Hanson, Chief-Permits & Stationary Source Modeling Section, Division of Air and Waste, stated this rule was being proposed as a clean-up package to amend portions of Department rules to make them the same as federal rules and to clarify and streamline portions of Department rules regarding permitting. He requested the Board adopt Board Order AM-12-07.

Mr. Ela MOVED, seconded by Dr. Clausen approval of the Request for adoption of Board Order AM-12-07, pertaining to the revision of chs. NR 400, 406, 407, 410, Wisconsin Administrative Code, incorporating changes in Federal Definitions, Permit Requirements and Portable Source Relocation Requirements. The motion carried unanimously.

- 3.A.3 Request adoption of Board Order LE-07-07, revisions to NR 8, Wisconsin Administrative Code, pertaining to procedures for implementation of the wildlife violators compact
Thomas Van Haren, Natural Resources Policy Officer, Law Enforcement Bureau stated that prior to the authority granted by 2005 Act 282, a person who had their hunting, trapping or fishing privileges suspended in another state could still obtain an approval and engage in those activities in this state. Under Act 282, the Department has been authorized to enter into a Wildlife Violator Compact with other states. Doing so will allow the Department to treat nonresidents who reside in other states which are members of the compact the same as residents when they are convicted of a violation in this state, and to treat residents convicted of violations in other member states the same as if they had been convicted in Wisconsin. He requested the Board adopt Board Order LE-07-07.

Discussion followed on how this rule would be administered by Wisconsin and the other compact states.

John Welter asked Secretary Frank and Department staff to bring this back to the Board one year from the effective date of the compact to give a report on the first year experiences of the program. The report should include activity from outside Wisconsin that affects Wisconsin residents, actions by Wisconsin residents affected by the compact, and any problems that had not been anticipated or recommended modifications. Approximate timing: Spring 2009.

Mr. Welter MOVED, seconded by Mr. O'Brien approval of the Request for adoption of Board Order LE-07-07, revisions to NR 8, Wisconsin Administrative Code, pertaining to procedures for implementation of the wildlife violators compact. The motion carried unanimously.

- 3.A.4 Request adoption of Board Order SS-06-06, proposed amendments to ch. NR 149 related to Laboratory Certification and Registration
David Webb, Section Chief, Environmental Science Services, Integrated Science Services Bureau stated that the Department has proposed repealing and recreating Chapter NR 149 in its entirety to make it more efficient to administer, facilitate compliance with it from the regulated community, improve the structure used for certifying and registering laboratories, establish a more equitable fee schedule, and introduce options to operational requirements of laboratories that increase regulatory flexibility. He requested the Board adopt Board Order SS-06-06.

Public Appearances:

1. **Paul Kent**, Madison, representing the Municipal Environmental Group, Wastewater Division, stated their support of this rule. He urged a more interactive process be used in future rule revisions, said that any future changes to NR 149 should continue to be cognizant of the need for cost-effective lab operations, and recommended that the Department consider using guidance materials as a way to keep the rules current and provide some flexibility.
2. **Ken Blomberg**, Junction City, representing the Wisconsin Rural Water Association, which represents 670 small wastewater and sanitary districts in Wisconsin, stated the newly updated

NR 149 is written in more common language and provides better quality lab results without too much additional effort. Their association supports this revision.

3. **Katie Edgington**, Beloit, representing the Laboratory Certification Standards Review Council, stated significant changes and improvements were made in response to the public hearing comments of the draft rule. She appreciates the effort made by the Department to listen to all the input from all stakeholders affected by NR 149. Her council supports the approval of NR 149.
4. **George Bowman**, Verona, representing the Wisconsin State Laboratory of Hygiene, stated the proposed rule offers flexibility, represents good compromise, and will not be excessively burdensome for small wastewater or commercial laboratories in Wisconsin. He said the WSLH supports the proposed rule.

Mr. O'Brien MOVED, seconded by Dr. Clausen approval of the Request for adoption of Board Order SS-06-06, proposed amendments to ch. NR 149 related to Laboratory Certification and Registration. The motion carried unanimously.

- 3.A.5 Request authorization for public hearing on Board Order AM-34-07, proposed rules affecting NR 405, 407, and 408 pertaining to the incorporation of changes of federal regulations for the air permitting of ethanol plants

Jeff Hanson, Chief-Permits & Stationary Source Modeling Section, Division of Air and Waste, stated this rule is being proposed to amend portions of the Departments rules to incorporate federal rule changes per s.285.11(16), Wisconsin Statutes. He requested the Board approve authorization for public hearing on Board Order AM-34-07.

Discussion followed on items related to the impact of fugitive emissions, anti-back sliding provision, total suspended particulate matter, and the major source program.

Mr. Ela MOVED, seconded by Ms. Wiley approval of the Request for authorization for public hearing on Board Order AM-34-07, proposed rules affecting NR 405, 407, and 408 pertaining to the incorporation of changes of federal regulations for the air permitting of ethanol plants. The motion carried unanimously.

- 3.A.6 Request authorization for public hearing for Board order AM-31-07, incorporation of federal amendments to the national emission standards for hazardous air pollutants (NESHAP) into chs. NR 460 (general provisions) and 469 (halogenated solvent cleaning) into the Wisconsin Administrative Code

William Baumann, Section Chief, Compliance and Enforcement, Air Management Bureau stated that the amendments to the general provisions revise the language relating to startup, shutdown and malfunction plans and add force majeure as a reason for being unable to meet a performance test deadline. Since the amended regulations are already in effect at the national level, there are no policy issues to be resolved and no controversy is expected. He requested the Board approve the authorization for public hearing.

Ms. Wiley MOVED, seconded by Mr. Welter approval of the Request for authorization for public hearing for Board order AM-31-07, incorporation of federal amendments to the national emission standards for hazardous air pollutants (NESHAP) into chs. NR 460 (general provisions) and 469 (halogenated solvent cleaning) into the Wisconsin Administrative Code. The motion carried unanimously.

- 3.A.7 Request authorization for Public Hearings for Board Order WT-35-07, Revision of Chapter NR 105 Relating to the Establishment of Surface Water Quality Criteria and Secondary Values for Toxic Substances

Bob Masnado, Water Quality Standards Section Chief, Watershed Management Bureau, spoke on behalf of Russell Rasmussen. He stated that the Department is proposing to update water quality criteria for 18 toxic substances in ch. NR 105 to be consistent with federal requirements. No changes are proposed in the procedures used for developing criteria in ch. NR 105; only the

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numerical criteria for some of the substances regulated in that code are being addressed at this time. He requested the Board approve authorization for public hearing.

Discussion followed on the discharge of arsenic, concentration limits, and the effects of exposure on human health and aquatic life.

Mr. O'Brien MOVED, seconded by Mr. Ela approval of the Request for authorization for Public Hearings for Board Order WT-35-07, Revision of Chapter NR 105 Relating to the Establishment of Surface Water Quality Criteria and Secondary Values for Toxic Substances. The motion carried unanimously.

- 3.B. Land Management, Recreation, and Fisheries/Wildlife
- 3.B.1 Land Acquisition - Jackson Marsh Wildlife Area - Washington County

Mr. Ela MOVED, seconded by Mr. Welter approval of Land Acquisition – Jackson Marsh Wildlife Area - Washington County. The motion carried unanimously.

- 3.B.2 Land Acquisition - Glacial Habitat Restoration Area - Winnebago County

Mr. O'Brien MOVED, seconded by Dr. Clausen approval of Land Acquisition - Glacial Habitat Restoration Area - Winnebago County. The motion carried unanimously.

- 3.B.3 Land Acquisition - Onion River Stream Bank Protection Area - Sheboygan County

Mr. Welter MOVED, seconded by Mr. Ela approval of Land Acquisition - Onion River Stream Bank Protection Area - Sheboygan County. The motion carried unanimously.

- 3.B.4 Land Acquisition & Project Boundary Modification - Peter Helland Wildlife Area - Columbia County

Mr. O'Brien MOVED, seconded by Ms. Wiley approval of Land Acquisition & Project Boundary Modification - Peter Helland Wildlife Area - Columbia County. The motion carried unanimously.

- 3.B.5 Land Acquisition - Dunnville Wildlife Area - Dunn County

Dr. Clausen MOVED, seconded by Mr. Welter adoption of Land Acquisition - Dunnville Wildlife Area - Dunn County. The motion carried unanimously.

- 3.B.6 Land Acquisition and Partial Donation - Turtle Flambeau Scenic Waters Area - Iron County

Dr. Clausen MOVED, seconded by Mr. Welter approval of Land Acquisition and Partial Donation - Turtle Flambeau Scenic Waters Area - Iron County. The motion carried 6-0. Mr. Ela abstained.

Dr. Thomas adjourned the meeting for lunch. The meeting reconvened at 1:00 p.m.

- 4. Citizen Participation – 1:00 p.m.
- 4.A. Citizen Participation
Public Appearances
None

3.B.7 Request adoption of FH-30-07, rules to control the spread of Viral Hemorrhagic Septicemia virus in Wisconsin

Secretary Frank briefed the Board on the context and overall strategy to combat VHS, other potential threats to fish, and invasives.

Mike Staggs, Director, Fisheries and Habitat Bureau asked the Board permission to combine presentations for 3.B.7 and 3.B.8 into one.

The Board agreed.

Mike Staggs stated that the permanent order broadens, makes permanent, and clarifies the emergency measures put into effect April 8, 2007 by Order No. FH-22-07(E), May 2, 2007 by Order No. FH-25-07(E), and May 17, 2007 by Order No. FH-28-07(E) for the control and prevention of viral hemorrhagic septicemia (VHS) in fish in waters of the state. This rule will impose additional restrictions on the movement of fish, fish eggs, fish parts, and water from waters of the state but does not represent a departure from the existing policy of trying to control the spread of invasive species and pathogens. He requested the Board adopt Board Order FH-30-07.

Discussion followed on the provision of taking no live fish from affected waters, if the rule applies to all waters of the state, budgetary concerns, and the substance of the Department of Agriculture, Trade and Consumer Protection's (DATCP's) rules on VHS, including the authority to regulate wild bait harvesters.

Dr. Thomas stated that since the same set of people are listed for public appearances on both VHS rules that they should combine their testimony.

Public Appearances:

1. **Ed Harvey**, Waldo, Chair, Wisconsin Conservation Congress, requested the Board retain the conditions of the existing rule where if an additional body of water is found to contain fish with the disease the rule should go statewide. In addition, he requested that the Board amend the Emergency rule to remove the current rule that bans the use of minnows on Big Green Lake when fishing through the ice in water that is 50' or deeper.
2. **Bob Miller**, Sparta, Chair, Inland Fisheries Committee, Wisconsin Wildlife Federation (WWF) could not attend.
George Meyer, Wisconsin Wildlife Federation, with NRB approval, read Mr. Miller's Comments. The WWF strongly supports extending the requirements of the proposed permanent VHS rules to all Wisconsin waters and the Department should continue its efforts to urge the Wisconsin Legislature and the U.S. Congress to immediately adopt stiff regulations requiring international ships in the Great Lakes to treat their ballast water before discharging into U.S. waters.
3. **George Meyer**, Poynette, Executive Director, Wisconsin Wildlife Federation, amplified on Mr. Miller's comments and requested that the Board give Wisconsin lakes and their fisheries the best possible chance to avoid being infested with VHS by requiring these regulations be applied statewide.
4. **Ted Lind**, Milwaukee, president, Wisconsin Council of Sportsfishing Organizations, requested the Board apply regulations to go statewide immediately. He also noted that the public needs to get in the habit of disinfecting their equipment and the Department needs to find an effective way of stopping this virus.
5. **Bill West**, Black Creek, President, Wisconsin Aquaculture Association, stated that the Wisconsin Aquaculture Association (WAA) lauds efforts by any agency to manage the spread of VHS and pointed out WAA's considerable concerns with the proposed permanent rule. In proposed NR 20.08(7) the WAA proposes a subsection (e) stating:
(e) It is dead and originated from a registered fish farm in Wisconsin which complies with the rules developed by DATCP relating to the transport and stocking of fish in Wisconsin.

6. **David Gollon**, Dodgeville, Chair, Wisconsin Aquaculture Association, reiterated Mr. West's concerns and asked the Board to delay implementation of the permanent rule until WAA issues are addressed and a more meaningful version of the rule can be put forward. He asked for the emergency rule to be re-adopted with the addition of the 30 day harvest permit, seasonal stocking/harvest oversize gear provision, and with the closure of VHS positive waters rather than a statewide ban.
7. **Mike Arrowood**, Oakfield, Chair, Walleyes for Tomorrow, stated that it is the group's belief that neither of these rules addresses the clear and present danger of VHS infestation from private fishing boat traffic between Wisconsin and Lake Erie. He noted the absolute and complete failure of the Wisconsin Department of Trade and Consumer Protection (DATCP) to protect the wild fish populations of Wisconsin. He also gave their objection to the total ban on fry stocking of walleye in Wisconsin in 2008.
8. **Terry Hogan**, Hayward, representing himself, addressed many concerns with the permanent and emergency rules but gave his support in general because it will keep VHS from being spread faster than the disease's natural course will take.
9. **Bill Pielsticker**, Lodi, representing Wisconsin Trout Unlimited, stated that the rules the Board imposes will help slow down the spread of VHS so its impact will be minimized. He supports the immediate approval of statewide restrictions.

Further discussion followed centering on DATCP rules for VHS, the Big Green Lake ban on minnows in waters deeper than 50', wild bait harvest, maintenance of livewells, gear, and boat/trailer for transport purposes, and on having the restriction statewide versus on a body of water by body of water basis.

Mr. Cole MOVED, seconded by Mr. O'Brien to table the Request for adoption of FH-30-07, rules to control the spread of Viral Hemorrhagic Septicemia virus in Wisconsin until the December 2007 meeting and requested a joint meeting with the Department of Agriculture, Trade and Consumer Protection (DATCP) in order to obtain information on how the DNR rules integrate with DATCP's rules approved on October 10, 2007. The motion carried unanimously.

- 3.B.8 Request adoption of FH-40-07(E), rules to control the spread of Viral Hemorrhagic Septicemia virus in Wisconsin
Mike Staggs, Director, Fisheries and Habitat Bureau combined this presentation with 3.B.7.

Mr. O'Brien MOVED, seconded by Dr. Clausen to amend the request for adoption of FH-40-07(E), rules to control the spread of Viral Hemorrhagic Septicemia virus in Wisconsin so that if the VHS virus is found in any additional lake or stream, the emergency rules apply to all waters of the state.

Mr. Welter MOVED to amend the motion to delete the current rule that bans the use of minnows on Big Green Lake when fishing through the ice in water that is 50' or deeper. Mr. O'Brien and Dr. Clausen accepted as a friendly amendment.

Mr. Cole MOVED, seconded by Mr. Welter to amend the motion to make the emergency rule immediately applicable to all waters of the state.

Dr. Clausen MOVED, seconded by Mr. O'Brien to amend the motion to allow the DNR to continue to allow wild bait harvest by permit only. Mr. Cole and Mr. Welter accepted as a friendly amendment.

Dr. Thomas MOVED, seconded by Dr. Clausen to include in the rule a requirement that all water in livewells, bilges and other compartments or containers of boats, trailers and other

boating and fishing equipment must first be drained before being transported over land for use in waters of the state. The amendment carried unanimously.

The amended motion carried unanimously.

5. Board Members' Matters

Mr. Welter stated that the Board minutes contain a tremendous amount of information and take a considerable amount of work for staff to compile and board members to review. The public has access to all documents pertaining to a board meeting as well as being able to purchase a recording of the meeting. He asked the Board if the minutes could be abbreviated and report on actions only and not be a transcript.

Richard Prosize, Director, Legal Services stated there are no legal issues related to abbreviating the minutes as to Mr. Welter's request.

The Board approved Mr. Welter's request and that the abbreviated version of the minutes will begin with the October 24, 2007 meeting.

5.A. Approval of the 2008 Natural Resources Board Meeting Dates

Mr. Welter MOVED, seconded by Mr. Ela approval of the 2008 Natural Resources Board Meeting Dates. The motion carried unanimously.

6. Special Committees' Reports

None

7. Department Secretary's Matters

Secretary Frank briefed the Board on highlights from the 2007 – 2009 budget and Stewardship Reauthorization.

Dr. Thomas requested that Preston Cole receive a budget briefing from Department staff.

7.A. Retirement Resolutions

7.A.1 Bruce Chevis

7.A.2 Chuck Hammer

7.A.3 Robert D. Young

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

7.B. Memorial Resolutions

7.B.1 Michael W. King

Mr. Welter MOVED, seconded by Mr. Ela approval of the memorial resolution. The motion carried unanimously.

7.C Donations

7.C.1 The Lyle Hougans Estate will donate to Lake Kegonsa State Park \$17,791.97 to be used for general support and maintenance of the park.

Mr. Welter MOVED, seconded by Dr. Clausen approval of the Lyle Hougans Estate donation to Lake Kegonsa State Park \$17,791.97 to be used for general support and maintenance of the park. The motion carried unanimously.

8. Information Items

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

8.B. Land Management, Recreation, and Fisheries/Wildlife
None

The meeting adjourned at 4:10 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.