

BOARD OF AGRICULTURE, TRADE AND CONSUMER PROTECTION MINUTES

December 17, 2014

The Board of Agriculture, Trade and Consumer Protection met on December 17, 2014, beginning at 9:00 a.m. for a tour of the Wisconsin Weights & Measures Laboratory located at 3601 Galleon Run, Madison. The Board then held its official business meeting at the Department of Agriculture, Trade and Consumer Protection, 2811 Agriculture Drive, Board Room, Madison, WI. The meeting was preceded by public notice as required by s. 19.84, Stats.

Call to Order

Board Chair Andy Diercks called the meeting to order at 11:02a.m.

Members Present

Andy Diercks, Dennis Badtke, Miranda Leis, Dean Strauss, Mark Schleitwiler, Nicole Hansen, Mike Dummer, Nicole Hansen were present. John Koepke was absent.

Minutes

Motion

Nicole Hansen made a motion, which was seconded by Dennis Badtke, to approve the November 19, 2014 Board meeting minutes. Motion was approved unanimously.

Public Comment

John Manske appeared before the board on behalf of the Dairy Cooperative Members, Farm Supply Cooperative Members, and as the Chair of the Agricultural Producer Security Council (APS). John wished to give the Secretary and department staff accolades for their work on ATCP 65, which is a combination of current ATCP chapters related to Dairy Farms and Dairy Plant rules. The Dairy Cooperative membership was enthused to see the performance based dairy farm inspection aspect had been retained in the proposed new rule. The Farm Supply Cooperative members urge the board to approve the ATCP 40 scope statement, which relates to Fertilizer and Related Products. They feel the rule needs updating especially in the current ratio used in the combined nutrient index, which no longer reflects current market prices. As Chair of the Agriculture Producer Security Council, John reported that the council has asked the Department to analysis the impacts of separating the contractor categories from one another in the APS fund and to look at possible changes to the payout percentages given to producers on a business default.

George Reistad, representing the Michael Fields Agricultural Institute, appeared before the board regarding the Farm to School Advisory Council. In a recent proposal by the Department of Administration, certain state boards and councils were identified for possible elimination. The Michael Fields Agricultural Institute would like to oppose this proposal and reiterate that they support the council along with the momentum and work that is being done throughout the state through this council. They feel there is a growing interest from producers and institutions in support of the work of the council.

Division of Trade & Consumer Protection

Sandy Chalmers, Division Administrator for Trade & Consumer Protection, presented a Division update to the board. She discussed several recent judgments against companies violating the home improvement contractor law and the No Call list. Other recent enforcement actions included: consumer fraud, fraudulent member charges, and cases that were referred to the Department of Justice.

Ms. Chalmers also provided an update on the consolidation of the petroleum testing and storage tanks program, which came originally came to the department from the Department of Safety and Public Services (DSPS). Staff members that came from DSPS continue to be cross trained on large scale testing methods to improve efficiencies.

Propane complaints were a big topic for the Division this past year with over 400 consumer complaints received against 37 different companies. Many of the complaints regarded supply shortages, contracts not being honored, and price increases or added fees. The Division mediated 73 complaints against 31 companies and investigated 333 against six companies. Due to the Divisions' efforts, \$22,000 were issued back to consumers in the form of refunds or credits. Several companies also signed voluntary assurances of compliance, while two more cases were referred to the Department of Justice. The Division has also prepared a fact sheet for consumers, which was well received, that included tips for buying propane.

High Capacity Well Permit Update (Report)

Eric Ebersberger, Water Use Section Chief for the Department of Natural Resources (DNR), presented a report to the board regarding high capacity well permitting.

As defined in Wisconsin Statutes, a high capacity well is “a well that, together with all other wells on the same property, has a capacity of more than 100,000 gallons per day.”

According to Mr. Ebersberger, there are 8,300 high capacity wells statewide with a capacity of 70 gallons per minute.

Mr. Ebersberger discussed the evolution of the high capacity well permitting process through the years. Initially the DNR reviewed high capacity well applications to ensure compliance with the state well code (NR 812). This included a review to avoid impacting water supply to public utility wells. In 2003, Act 310 was issued which required the high capacity well application review process to become more extensive. Wis. Stat.s.281.34 and implementing Wis. Administrative Code ch. NR 820 provided for broadened environmental review and conditioning of high capacity wells in three specific situations:

1. When the well was proposed to be located within a groundwater protection area, that is, within 1,200 feet of a trout stream, outstanding resource water (ORW) or exceptional resource water (ERW).
2. The proposed well would result in flow reduction to a spring with normal flow greater than or equal to 1 cubic foot per second (cfs).
3. The proposed well would result in a water loss greater than 95 percent.

In 2011, the DNR's role changed again after the Wisconsin Supreme Court's decision in the Lake Beulah Management District case. The Court concluded that the DNR had the authority and a general duty to consider potential harm to waters of the state caused by any proposed high capacity wells. Following the Lake Beulah decision, the DNR screened all high capacity well applications for potential significant adverse environmental impacts to all waters of the state.

Finally, on September 3rd of this year, an Administrative Law Judge ruled that in the case of a Richland Dairy, the DNR has the authority to take into account the cumulative impacts caused by existing groundwater withdrawals.

The Lake Beulah and Richfield Dairy decisions together have significantly complicated the DNR's review of high capacity well applications. At this time, the DNR does take into account the cumulative impact of high capacity wells on waters of the state within the vicinity of the proposed well.

Glendale School Principal- Report

Over the lunch hour, the board met with Ben Ketterer, principal for Glendale Elementary School. Glendale Elementary School is a school in Madison comprised of many students from low income families. Glendale Elementary has partnered with the agency the last several years to provide student interaction and tutoring with Department staff. The Department hosts Take your School to Work Day, conducts fundraisers to support the school and participates in the Glendale Gardens program.

ATCP 65 Milk and Milk Products- Hearing Draft

Steve Ingham, Division Administrator for the Division of Food Safety, presented the hearing draft of ATCP 65, Milk and Milk Products, which is a combination of ATCP 60 and ATCP 80 relating to Dairy Farms and Plants respectively.

The rule modifies existing provisions of ATCP 60 and ATCP 80 and adopts additional provisions to ensure compliance with the most recent version of the federal Food and Drug Administration's (FDA's) Pasteurized Milk Ordinance (PMO). Although ATCP 60 and ATCP 80 are largely consistent with the PMO, Wisconsin's dairy farm and dairy plant rules must be revised periodically to maintain that consistency and to adapt to new innovations in the dairy industry.

Consolidation of these two rule chapters will eliminate numerous, and sometimes confusing, cross-references between the two chapters. In recent years, there has been increased interest in the operation of small dairy plants on the same site as the dairy farm supplying the milk. With the proposed rule consolidation, operators of these "farmstead" or "artisanal" dairy plants can now find most of the rules affecting their business in one chapter, rather than two. The rule revises certain existing provisions and creates new provisions, as necessary, to ensure: 1) Wisconsin's Grade "A" and Grade "B" dairy sectors comply with the PMO and USDA standards, respectively, when they meet Wisconsin regulatory requirements, and 2) state regulations do not unnecessarily hinder technological advancement by Wisconsin's internationally recognized dairy industry.

If the Board authorizes public hearings on this rule, the department will refer a copy of the rule to the Legislative Council Rules Clearinghouse and publish a hearing notice in the Wisconsin Administrative Register. The department plans to hold hearings in Eau Claire, Mosinee, Sheboygan, and Madison.

Motion

Miranda Leis made a motion, which was seconded by Dean Strauss, to approve the ATCP 65 Hearing Draft. Motion was approved unanimously.

ATCP 55 – Meat and Meat Food Products (Final Draft Reconsideration)

Steve Ingham, Division Administrator for Food Safety, presented the final draft rule of ATCP 55 relating to Meat and Meat Food Products for final reconsideration.

The Board approved an earlier version of this rule at its July 23, 2014 meeting, but a stakeholder identified an inadvertent error in the proposed rule text and commented on potential confusion that could result from another part of the text.

The stakeholder comment identified, in ATCP 55.07(6)(intro.), an ambiguity as to whether the term “adulterated”, for which the CFR definition was cited, applied to a carcass or a live animal before slaughter. The stakeholder stated that the term applies to the carcass and, after further review, the department agreed. The rule text now clearly indicates that an animal which yields an adulterated carcass cannot be presented for slaughter. The intent of the rule is not altered by this change; the rule still specifies corrective actions that state-licensed meat establishments must impose on certain livestock producers before the establishment operator accepts animals from the producer for slaughter. The required corrective actions apply to livestock producers who on two or more occasions during a calendar year submit animals to be slaughtered at a state- or federally inspected meat establishment, which yield carcasses testing positive for any illegal drug residue.

Motion

Mike Dummer made a motion, seconded by Nicole Hansen, to approve the final draft reconsideration of ATCP 55. Motion approved unanimously.

FSMA Update (Report)

Steve Ingham, Division Administrator of the Division of Food Safety, along with John Petty, Division Administrator for the Division of Agricultural Resource Management provided an update to the board regarding the FDA Food Safety Modernization Act (FSMA).

Seven proposed rules have been issued to implement FSMA. While the initial comment period has closed for each of the rules, several supplement proposals have been issued for changes to proposed rules dealing with Produce Safety, Preventative Controls- Food for Humans, Preventative Controls- Food for Animals and Foreign Supplier Verification Programs. The comment period for these supplemental proposals was scheduled to end December 15.

An implementation deadline has been set for each FSMA related rule ranging from August 2015 through May 2016. State regulators are actively considering their role in implementation of the rules. Each regulator must consider necessary training and what changes must be made to their state regulations for consistency with the rules.

Wisconsin Agricultural Statistics Services (Report)

Greg Bussler, State Statistician, updated the Board on the following:

- 2014 Small Grain County Estimates
 - Released on Thursday, December 11 and used by FSA and RMA for crop insurance payments.
 - Estimates available on the NASS website and QuickStats.

- Winter Wheat- Dane County was largest winter wheat producing county in Wisconsin in 2014. This was Dane County's third highest winter wheat production since estimates began in 1966.
- Oats- Langlade County was the largest oat producing county in Wisconsin in 2014.
- Production Report
 - In October, 2.34 billion pounds of milk were produced in Wisconsin.
 - Milk production in 23 major states totaled 16.0 billion pounds.
 - As of December 1st, Wisconsin had 10,106 milk cow herds, down 475 herds since December 2013.
- Price Report:
 - November price of \$21.60 per hundredweight of milk.
 - Corn sold for \$4.40 per bushel.
 - Soybeans sold for \$12.60 per bushel.
 - Alfalfa hay sold for \$200 per ton.
- Other Noteworthy Items
 - Tenure, Ownership and Transition of Agriculture Land (TOTAL)
 - Census follow on survey and reporting is mandatory.
 - Data is collected on land ownership, rental agreements and landlord operating expenses.
 - Data will be collected in February/March 2015.
 - Organic Production Survey
 - Census follow on survey and reporting is mandatory.
 - A questionnaire will be mailed to certified organic producers in January on their organic production in 2014.
 - Census of Horticulture
 - Census follow on survey and reporting is mandatory.
 - A questionnaire will be mailed in December to firms that produce \$10,000 a year or more of horticultural crops including nurseries and florists.
 - Annual/Final 2014 Crop Production Report will be released on Monday, January 12, 2015.

ATCP 21 Exotic Plant Pest Emergency Rule- (Blanket Scope Statement)

Chris Deegan, Plant Protection Section Chief for the Plant Industry Bureau in the Division of Agricultural Resource Management, presented a blanket scope statement to the board relating to ATCP 21, Plant Inspection and Pest Control.

This umbrella scope statement allows future emergency rules to be enacted in a timely manner that create county, multi-county, township or multi-township quarantines for an exotic plant pest where the pest is detected. Examples include cases of Emerald Ash Borer (EAB), Hemlock Woolly Adelgid (HWA) and Thousand Cankers Disease (TCD). The quarantine will prohibit the

movement of all articles potentially harboring these damaging pests. A federal quarantine may take effect up to six months after a formal submission by the state plant regulatory official.

This scope statement will expire at one year's time and a new scope statement will need to be approved to continue authorization of emergency rulemaking related to exotic pest quarantines.

Motion

Dennis Badtke made a motion, seconded by Miranda Lies, to approve the blanket scope statement of ATCP 21. Motion approved unanimously.

ATCP 40-Fertilizer and Related Products (Scope Statement)

Robby Personette, Natural Resource Program Manager and Amy Basil, Environmental Program Supervisor, both from the Division of Agricultural Resource Management, presented a scope statement related to ATCP 40, Fertilizer and Related Product.

The updates will amend the current Fertilizer and Related Products rule, as necessary, to incorporate changes related to fertilizer content deficiencies, and modernize the current formulas used in determining the economic value of fertilizer. These updates will reflect the relative average wholesale prices for the primary plant nutrients within a fertilizer product.

Motion

Miranda Leis made a motion, seconded by Nicole Hansen, to approve the scope statement of ATCP 40. Motion approved unanimously.

Land and Water Bureau Report

Keith Foye, Program and Policy Manager, along with Lisa Schultz, Agency Liaison and Matt Woodrow, Conservation Engineering Unit Supervisor, from the Division of Agricultural Resource Management presented a PowerPoint regarding the Bureau of Land and Water Resources recent training efforts and the Department's participation in the Regional Conservation Partnership Program, a program established in the 2014 Farm Bill and administered by the USDA- Natural Resources Conservation Service.

The report highlighted three training programs in particular; the Agricultural Engineering Practitioner Certification program, the Nutrient Management Farmer Education program and the Statewide Interagency Training Committee. The 2013 Wisconsin Land & Water Annual Progress Report was also made available to the board.

Farmland Preservation Program (Report)

Scott Karel, Environmental Analysis and Review Specialist, along with Keith Foye, Program and Policy Manager, provided an updated to the board regarding the current status of the Farmland Preservation Program.

The Farmland Preservation Law of 2009 required all counties to update their farmland preservation plans. These plans are meant to identify lands that would remain in agricultural or agricultural-related use. Previously, these plans had no expiration date and many of them were created in the 1980's and were outdated. The new law established expiration dates for all the farmland preservation plans, with approximately 14 plans expiring each year. When counties submit their plans for certification, the department may certify the plan for up to 10 years, ensuring that the documents are revisited in the future.

Since 2009, 30 plans have been updated and certified by DATCP. Nearly all of the updated plans have been certified for 10 years, with just two certified for five.

Many counties have been encouraged to utilize objective criteria for identifying their farmland preservation plan area following the creation of ATCP 49, the administrative rule governing farmland preservation which went into effect January 1 of 2014. The rule provides that the plan area should be based primarily on such criteria as soils, historical land use, proximity to agricultural infrastructure, presence of development pressure and not primarily on landowner preference for participation in the program.

Board Member Reports

Dennis Badtke- Dennis Badtke congratulated Susan Buroker, Assistant Deputy Secretary, on her upcoming retirement and will miss working with her. He is looking forward to his role in an upcoming Christmas pageant.

Andy Diercks- Andy thanked Susan Buroker for her 28 years of service on behalf of the citizens of the state. She exemplified the positive state employee worker and will be missed. Andy also thanked Sandy Chalmers and the department for the tour that morning as it was very thorough and educational. This past fall, many potato farms were struggling with the wet fall and storage problems. Andy has been attending many meetings during the winter season focusing on water issues and implements of husbandry. Andy wished the board a Merry Christmas and Happy New Year.

Nicole Hansen- Nicole thanked Susan Buroker, Assistant Deputy Secretary, for all her guidance and help through the years and wished her well in retirement. Nicole also thanked Sandy Chalmers and the department for the tour of the Weights and Measures Laboratory as she

thought it was very insightful to see the hands on work that goes into that regulation program. Nicole was pleased to hear that the cranberry referendum passed. She is busy with meetings and planning for the upcoming cranberry season. With possible cold weather on its way, Nicole will be working to protect her crop from freezing. Nicole wished the board a Merry Christmas and Happy New Year.

Dean Strauss- Dean thanked the department for the tour that morning. He really enjoyed seeing the accuracy that goes into the weights and measure program. On the farm, he is finishing up tillage. He also congratulated Susan Buroker on her upcoming retirement and wished everyone a Merry Christmas.

Mike Dummer- Harvest is getting close to being done on the farm and will hopefully be done by Christmas. During the month of January, Mike anticipates he will be drying corn. He complimented Susan Buroker on her professionalism and stated that he has enjoyed working with her and wishes her well in retirement. Mike wished the board a Merry Christmas and Happy New Year.

Miranda Leis- Miranda thanked the department for tour that morning of the Weights and Measures Laboratory and was impressed with the many aspects of the program. Miranda congratulated Susan Buroker on the work that she did to build the new DATCP Laboratory and wished her well in retirement. . Miranda and her husband Corey recently attended the Wisconsin Farm Bureau annual meeting which went well. Miranda is transitioning from her previous role with Organic Valley to her new position in feed management. Organic Valley is focusing on working with new producers and retaining current producers to help ease the organic milk supply shortages at this time. Miranda wished everyone a Merry and Blessed Christmas.

Mark Schleitwiler- At work, Mark is focusing on winding down the year for BelGioioso Cheese. He congratulated Susan Buroker on her retirement and wishes everyone a Merry Christmas and a Happy New Year.

Doug Wolf- Doug wished the board a Merry Christmas and Happy New Year. He also congratulated Susan Buroker, Assistant Deputy Secretary, on her retirement and thanked her for her state service. Things on the farm have been slow but he was happy to report that the animals have been doing well since their bout with PED last year.

Secretary's Report

In early December, the Secretary participated in the Governor's Northern Wisconsin Economic Development Summit in Minocqua. Division of Trade and Consumer Protection Administrator Sandy Chalmers also attended and spoke on data protection. The annual summit provides an opportunity to address the unique challenges and opportunities of Northern Wisconsin's economy through a forum with the Governor's Cabinet, keynote speakers, and a series of workshops.

A Green Bay company, Smoke 'N Joe's Grill'n Meats, has been accepted into the federal Cooperative Interstate Shipment (CIS) program, which allows the sale of state-inspected meat products across state lines. The company began production December 1st and produces a variety of raw bratwurst patties for sale in sport venues throughout Wisconsin and Michigan.

DATCP's international trade staff is assisting companies, such as Delong, with completing registration certificates for overseas companies who are selling soybeans to China, which requires all traders to certify that the beans are GMO-free.

U.S. Livestock Genetics Export has approved USDA funding for Wisconsin totaling \$43,500 for 2015. Funding will be used to execute international trade activities focusing on building markets for livestock and genetics.

The recruitment period for the 68th Alice in Dairyland opened Monday, November 17th, with applications due January 5, 2015. The Secretary asked the board to encourage women in agriculture who are articulate and can present agriculture and the programs that DATCP supports through Wisconsin to apply. Whether an individual is selected or not, they obtain valuable skills that will serve them well in the future.

The Producer Security Council met recently to discuss the program, its structure, future and funding. Many concepts and ideas were shared between the council members which has generated several follow up questions. It's clear that the Council feels there is value to the program and they are now tasked with looking at the structure of the program to determine what would be best for producers moving forward.

In a recent Legislative Fiscal Bureau memo, the Wisconsin Department of Administration (DOA) proposed the elimination of several boards, councils and commissions. Two DATCP council's were identified for possible elimination, even though there was no contact made to the Secretary by DOA regarding these councils. To determine if these councils are valuable and relevant, the department needs to reach out to obtain citizen feedback and how they are impacted by the board or councils work. With many new legislators this season, the department will need to do more education to highlight our programs and councils and to explain how the agency operates.

The department is anxiously waiting for the Department of Health Services investigative report regarding the Durand incident, where several children got sick after attending an event. Until the report is released, DATCP Communications Director Jim Dick is working with reporters on what information we can provide at this time.

Secretary Rhoades, Department of Health Services staff and DATCP Food Safety staff met with industry stakeholders to discuss the possible consolidation of Health Services food safety and recreational licensing programs within DATCP's Division of Food Safety. The Secretary will report the findings to the Governor, who may decide to include the consolidation into his budget to be issued next spring.

The Secretary recognized Agriview reporter and editor Joan Sanstandt for her many of years of reporting agriculture news. She has been an impartial and trusted source for farmers throughout the years. The Secretary presented a plaque from the Governor's Office to Ms. Sandstadt to congratulate her on her upcoming retirement.

Future Schedule and Agenda Items

The Board is scheduled to meet February 18th in Madison.

Adjournment

By unanimous consent, the Board adjourned at approximately 1:35pm

Andy Diercks, Board Chair

Miranda Leis, Secretary