

# **BOARD OF AGRICULTURE, TRADE AND CONSUMER PROTECTION MINUTES**

**March 22, 2016**

The Board of Agriculture, Trade and Consumer Protection (“Board”) met on March 22, 2016, at the Department of Agriculture, Trade and Consumer Protection (“Department”), 2811 Agriculture Drive, Board Room, Madison, WI. The meeting was preceded by public notice as required by Wis. Stat. §19.84.

## **Call to Order**

Board Chair Miranda Leis called the meeting to order at 9:05 a.m.

## **Members Present**

Andy Diercks, Dennis Badtke, Miranda Leis, Dean Strauss, Greg Zwald, Paul Palmby, and Mark Schleitwiler were present. Doug Wolf and Nicole Hansen were absent.

## **Minutes**

### **Motion**

Andy Diercks made a motion, seconded by Dean Strauss, to approve the January 19, 2016, Board minutes. Motion approved unanimously.

## **Public Appearances**

**Aaron Stauffacher**, representing the Dairy Business Association (DBA) and the Dairy Business Milk Marketing Cooperative (DBMMC), commended the Department for their work on combining ATCP 60 and ATCP 80 into the new ATCP 65 rule, regulating Milk and Milk Products. Significant changes were made from the initial draft introduced to the public after taking in consideration comments and suggestions from the dairy industry. The DBA and DBMMC wanted the new rule to provide enough flexibility for dairy farmers and plants, while maintaining rigid standards to keep Wisconsin food products safe.

**Paul Zimmerman**, Executive Director of Governmental Relations for the Wisconsin Farm Bureau, encouraged the Board to adopt the scope statements of ATCP 50, Soil and Water Resource Management, and ATCP 51, Livestock Facility Siting. These rules need to be updated to reflect new code changes published by the Department of Natural Resources (DNR) to ensure harmonization and consistency in the standards.

**John Umhoefer**, representing the Wisconsin Cheese Makers Association (WCMA), appeared before the Board. Mr. Umhoefer informed the Board that Wisconsin won the World Champion Cheese title for the first time in 28 years, due in part to the hard work of the Department, the WCMA, and the Milk Marketing Board. The specialty cheese, *Roth Grand Cru Surchoix* made by Team Emmi Roth from Fitchburg, took first place in the competition. The WCMA echoed support of the proposed Final Draft of ATCP 65 and urged the Board to pass approval. In one year, the WCMA requested that the Board require the Division of Food Safety to provide a report as to the implementation of the rule and allow for public comment as well. Finally, Mr. Umhoefer voiced his support of emergency rule ATCP 100, related to Milk Contractors and Agricultural Producer Security Assessments. The Agricultural Producer Security Fund is currently being revised and reformed and this emergency rule will allow that process to complete without penalizing the industry in the meantime.

### **ATCP 10–Animal Disease and Movement (Scope Statement)**

Dr. Darlene Konkle, Assistant State Veterinarian in the Division of Animal Health, presented the Scope Statement of ATCP 10 relating to Animal Disease and Movement.

To control and eradicate diseases of swine, the swine industry in Wisconsin has requested the Department consider modifying reporting, testing, and movement requirements for porcine reproductive and respiratory syndrome (PRRS), porcine epidemic diarrhea (PED), and other emerging diseases affecting swine.

PRRS and PED are costly, highly contagious diseases among pigs that can result in tremendous production losses for swine producers. The current rule requires that a statement disclosing the PRRS and the PED status of the herd of origin, if known, be included on the Certificate of Veterinary Inspection (CVI) for any swine imported into Wisconsin. The current rule also requires that PRRS and PED in swine be reported to the Department within 10 days of diagnosis or diagnosis evidence. Except for movement to exhibitions and fairs, the current rule does not have any movement requirements for commercial swine in Wisconsin. These rule requirements were made in consultation with the swine industry as a first step to protect the swine industry from the diseases of PRRS and PED.

The proposed rule will make modifications to the current requirements in ss. ATCP 10.30 and 10.32, Wis. Admin. Code, along with other possible changes to ch. ATCP 10, Wis. Admin. Code, to require more proactive measures to prevent, control, and eradicate diseases of swine, providing important health protection for the Wisconsin swine livestock industry.

### **Motion**

Andy Diercks made a motion, seconded by Dennis Badtke, to approve the Scope Statement of ch. ATCP 10. Motion approved unanimously.

### **Wisconsin Farm Center Report**

Kathy Schmitt, Bureau Director for the Wisconsin Farm Center within the Division of Agricultural Development, presented a report to the Board.

The Wisconsin Farm Center works with farmers to improve their wellbeing so they can grow Wisconsin agriculture. Staff work with farmers to provide objective information they can use to make informed decisions. Assistance is provided through the use of a toll-free helpline, as well as individualized service at the farm table.

Core services include:

- Financial consultations and feasibility analysis
- Farm succession planning
- Mediation
- Rural Electric Power Quality
- Dairy Herd Diagnostic services
- Minority and beginning farmer services
- Specialty enterprise development
- Information and referral resources

Recently the Farm center worked closely with Hmong ginseng growers at the annual Spring Growers Meeting, where ginseng growers were able to collaborate and participate in small group workshops designed specifically for Hmong growers. Specialty crop block grants sponsored the attendance of 85 Hmong growers at the recent Midwest Organic & Sustainable Education Service (MOSES) conference.

### **Wisconsin Agricultural Statistics Services (WASS) Report**

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

- Production Report
  - In January, 2.51 billion pounds of milk were produced in Wisconsin.
  - Milk production in 23 major states totaled 16.6 billion pounds.
  - As of March 1, 2016, Wisconsin had 9,618 milk cow herds, down 410 herds since March 2015.
- Price Report
  - December price of \$17.20 per hundredweight of milk.
  - Price of corn sold for \$3.38 per bushel.
  - Soybean price sold for \$8.44 per bushel.
  - Alfalfa hay sold for \$98 per ton, down \$67 per ton since last year.
- Results from the January Livestock Surveys

- All cattle and calves in Wisconsin totaled 3.5 million head as of January 1. Nationally, cattle and calves numbered 92.0 million head, 3% higher than last year.
- Milk goat inventory in Wisconsin was the largest in the United States at 44,000 head.
- Sheep and lamb inventory in Wisconsin totaled 76,000 head as of January 1. This is the lowest sheep and lamb inventory since records started in 1920.
- Farms and Land in Farms
  - The total number of farms in Wisconsin in 2015 was 68,900. This is down 100 farms from 2014.
  - The total number of farms in the United States in 2015 was 2.07 million farms. This is down 18,000 farms from 2014.
  - Total land in farms in Wisconsin in 2015 was 14.4 million acres.
  - Wisconsin's average farm size in 2015 was 209 acres. This is down one acre from 2014.
- Crop Values
  - The production of Wisconsin's field and miscellaneous crops was valued at \$3.22 billion in 2015. This was a 12 percent decrease from 2014.
  - The value of corn production totaled \$1.67 billion, down 6 percent from the previous year. Wisconsin's corn price averaged \$3.40 per bushel in 2015.
  - The value of soybean production totaled \$787 million in 2015. The average price of soybeans in 2015 was \$8.50 per bushel.
- Corn and Soybean County Estimates
  - Estimates were released February 18 and are used by crop insurance to determine claim payouts.
  - Dane County led Wisconsin in corn production with 36.5 million bushels. The highest average yield was 194.2 bushels in Lafayette County.
  - Rock County led Wisconsin in soybean production in 2015 with 5.2 million bushels. The highest average yield was 56.9 bushels per acre in Lafayette County.
- 2015 Vegetables & Strawberries Summary
  - Wisconsin remained second in the nation for acres harvested, total production and value of production for the major processing vegetables in 2015.
  - Wisconsin maintained its number one ranking in production of processing snap beans. The state processed 43% of the nation's crop.
  - Wisconsin remained in 3<sup>rd</sup> place for processing sweet corn and processed green peas.
  - Wisconsin strawberry production in 2015 was estimated 3.40 million pounds, down 11% from last year.
- Other noteworthy items

- WASS is currently analyzing data from the March Planting Intentions Survey. The report will be released on Thursday, March 31.
- The July Cattle Survey for 2016 was cancelled due to budgetary constraints.

### **Manure Irrigation Task Force Report**

Rebecca Larson, from UW–Extension, provided a PowerPoint presentation to the Board regarding the Manure Irrigation Workgroup.

The purpose of the workgroup is to review issues and develop guidance on the practices of applying livestock manure or process wastewater through irrigation equipment – referred to as “manure irrigation.” The scope of workgroup activities is to address benefits, concerns, and any remaining questions associated with manure irrigation.

The workgroup set out to compile and review existing information, review new research, and produce written guidance and recommendations for the use of manure irrigation practices. The workgroup report will include background information, discussions of factors influencing the concerns and benefits associated with the practices, and recommendations developed by the group. The workgroup sought consensus on recommendations. Recommendations are intended for DNR, producers using or interested in the practices, local government officials, and other interested stakeholders.

The workgroup consisted of invited participants representing a cross-section of interests concerned with the use of irrigation equipment to apply livestock manure or process wastewater by agricultural operations. The workgroup does not have any formal authority for policy regarding Manure Irrigation.

The workgroup held its final meeting on September 30, 2015, with a final report scheduled for release on April 14, 2016.

### **ATCP 82–Bulk Milk Collection, Sampling and Transportation (Final Draft)**

Peter Haase, Bureau Director, joined by Arthur Ness, Food Scientist Advanced, both from the Division of Food Safety, presented the Final Draft of ATCP ch. 82.

Wisconsin has close to 10,000 licensed dairy farms shipping their milk to one of more than 400 licensed dairy plants in the state, or to a licensed dairy plant in another state. Approximately 4,000 bulk milk tankers from Wisconsin and other states deliver milk to Wisconsin dairy plants.

Prior to the adoption of 2015 Act 55, Wisconsin required the owner of bulk milk tankers used to transport Grade “A” milk to hold a license and a Grade “A” permit for each tanker. The Department charged a licensing fee of \$45 and issued a Grade “A” permit as an endorsement on

the license. 2015 Act 55 revised Wis. Stat. §97.21 eliminating bulk milk tanker licensing and license fee requirements while aligning Wisconsin with most other states by removing the requirement that bulk milk tanker operators hold both a tanker license and a Grade “A” permit.

This rule incorporates the recent statutory changes eliminating licensing and license fee requirements into ch. ATCP 82. The rule maintains the Grade “A” permit for the bulk milk tankers at no charge, but does adopt a modest increase in the re-inspection fee to cover the Department’s cost for those re-inspections. Re-inspections are conducted when the Department finds that a tanker has a regulatory violation. The proposed rule increases the re-inspection fee from \$45 to \$60. Few bulk milk tankers receive re-inspections. In the past year, only 13 tankers were re-inspected. This rule also adopts a new bulk milk tanker inspection frequency, at least once every 24 months, which was incorporated in the 2015 version of the Federal Food and Drug Administration’s Pasteurized Milk Ordinance (PMO).

As part of this rule revision, the Department also proposed to remove a confusing provision related to employees of companies that own bulk milk tankers. The current rule states that an employee who drives a bulk milk tanker is not required to obtain a separate Grade “A” permit to drive the truck, if the owner of the bulk milk tanker already has a Grade “A” permit for the tanker. However, this provision is unnecessary as an employee who drives a bulk milk tanker already bearing a Grade “A” permit would never be expected to acquire a separate Grade “A” permit. The original intent of the rule was to exempt an employee who drives a bulk milk tanker transporting and holding Grade “A” milk from the requirement to hold a bulk milk weigher and sampler license if the employee does not weigh or sample the milk. This requirement is implicitly stated in s. ATCP 82.04(1).

The Department held three public hearings in January 2016, in Green Bay, Eau Claire, and Tomah, Wisconsin. There were no attendees and no written or oral comments were received.

**Motion:**

Dean Strauss made a motion, seconded by Andy Diercks, to approve the Final Draft of ch. ATCP 82. Motion approved unanimously.

**ATCP 70/71–Food Processing Plants; Food Warehouses and Milk Distributors  
(Final Draft)**

Peter Haase, Bureau Director, joined by Arthur Ness, Food Scientist Advanced, both from the Division of Food Safety, presented the Final Draft related to ATCP ch. 70/71.

Under state law, food warehouses (ch. ATCP 71) and food processing facilities (ch. ATCP 70) are distinct entities that require separate licensing. Under current rules, a food warehouse that engages in food processing activities, even low-risk repacking of already-packaged foods, must hold separate food warehouse and food processing plant licenses. The proposed rule change exempts the following from food warehouse activities that must be done under a food processing

plant license: 1) re-packing foods that are already packaged and labeled for retail sale into containers for further distribution, 2) combining two or more individually packaged and labeled food items into a combination package for retail sale, and 3) manufacturing ice that is used for temperature control of food during shipment or storage.

This rule also modifies food warehouse regulations to achieve consistency with federal and state regulations related to the storage of fish, fishery products, and molluscan shellfish. These products pose unique threats to human health, including histamine production in temperature-abused fish species such as tuna, and transmission of *Vibrio vulnificus* via improperly harvested or handled molluscan shellfish. As part of the existing federal-state cooperative program for shellfish safety, state regulations require that Wisconsin firms, including food warehouses, that ship, shuck and pack, re-pack, or re-ship molluscan shellfish for interstate commerce must hold a no-fee licensee-dealer certification. The proposed rule clarifies this requirement in ch. ATCP 71 (Food Warehouses).

Federal regulations include the storage of fish, fishery products, and molluscan shellfish in the definition of processing of these products, and therefore firms performing these activities are subject to Hazard Analysis and Critical Control Point (HACCP) regulations. Wisconsin food processing plant regulations (ch. ATCP 70) adopt, by reference, the Federal HACCP regulations for processing of fish and fishery products done in a food processing plant (21 CFR 123, cited in s. ATCP 70.18). Most Wisconsin food warehouse operators are aware of, and follow the HACCP regulations without being explicitly required to do so in Wisconsin rules. The proposed rule clarifies that the HACCP requirements also apply to operators of warehouses handling fish, fishery products, and molluscan shellfish, and will be enforced by the Department.

This proposed rule harmonizes the food warehouse refrigeration temperature requirement for eggs with the requirement found in ch. ATCP 88 (Eggs). This harmonization will remove confusion over the maximum refrigeration temperature for egg producers or egg handlers who receive eggs from another egg producer or egg handler and store the eggs for more than 24 hours before selling them.

Finally, this proposed rule clarifies which portions of new federal regulations implementing the Federal Food Safety Modernization Act (FSMA) must be followed by Wisconsin-licensed food warehouse operators.

The Department held three public hearings in February 2016, in Lacrosse, Green Bay, and Waukesha, Wisconsin. There were no attendees and no written or oral comments were received.

**Motion:**

Andy Diercks made a motion, seconded by Paul Palmby, to approve the Final Draft of ch. ATCP 70/71. Motion approved unanimously.

### **ATCP 65–Milk and Milk Products (Final Draft)**

Peter Haase, Bureau Director, joined by Arthur Ness, Food Scientist Advanced, both from the Division of Food Safety, presented the Final Draft related to ATCP ch. 65.

The rule modifies existing provisions of ATCP 60, Dairy Farms, and ATCP 80, Dairy Plants, and adopts additional provisions to ensure compliance with the most recent version of the 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. The Final Draft rule also indicated what provisions of the new federal regulations implanting the FSMA must be followed by dairy plant operators.

Provisions from ATCP 60 and ATCP 80 were renumbered, consolidated, and reorganized into one rule. Wording was changed throughout to provide greater clarity and modernize terms. For example, references to “milk haulers” were changed to “bulk milk weigher and samplers” to reflect the actual name of the license held by people who collect, sample, and transport milk. References to “inspectors” were changed to “division representatives” to reflect the broader range of staff, e.g., sanitarians, food scientists, regulatory specialists, who may conduct inspections. Subchapter, section, and subsection chapter titles were also revised throughout to more clearly reflect the content of the rule. The Final Draft rule also indicates what provisions of the new federal regulations implementing the FSMA must be followed by dairy plant operators.

The Department held five public hearings:

February 13, 2015	Mead Public Library, Sheboygan, Wisconsin
February 20, 2015	DATCP, Madison, Wisconsin
February 23, 2015	Menomonee Public Library, Menomonee, Wisconsin
February 24, 2015	North Central Technical College, Wausau, Wisconsin
January 14, 2016	DATCP, Madison, Wisconsin

A total of ten persons registered in the first four hearings. Following the initial four public hearings, the hearing record remained open until March 13, 2015, for additional written comments. The Department held an additional follow-up hearing ten months later on January 14, 2016, with written comments accepted through February 15, 2016, after further revising the rule in response to the comments received. A total of six persons registered in this latter hearing, including three who had also attended a 2015 hearing.

Written comments were obtained from sixteen individuals, four of whom commented in conjunction with both the 2015 and the 2016 hearings. Extensive written comments were received from the Department technical staff as the rule was revised in response to the 2015 and 2016 comments. Legislative Council Rules Clearinghouse comments were considered and appropriate revisions were made in the Final Draft.

The Board thanked the Department and the Division of Food Safety on the work that they did to combine the two separate rules, while incorporating industry feedback.

**Motion:**

Dean Strauss made a motion, seconded by Mark Schlietwiler, to approve the Final Draft of ch. ATCP 65. Motion approved unanimously.

**ATCP 100–Milk Contractors Emergency Rule  
(Scope Statement)**

Jeremy McPherson, Director of the Bureau of Business Trade Practices within the Division of Trade and Consumer Protection, presented to the Board the emergency rule Scope Statement related to milk contractors.

The Agricultural Producer Security Fund (APSF) is a public trust administered by the Department. Milk contractors, grain dealers, grain warehouse keepers, and vegetable contractors (collectively known as contractors) must purchase a license to obtain milk, grain, and vegetables, respectively, from producers, and most contractors are required to contribute to the APSF annually. Funds are used to settle claims by producers in the event that a contractor defaults on payment. Funds from each industry are accounted for separately and deposited into the overall fund. Ch. 126, Stats. establishes detailed fund assessment requirements, except that it requires the Department to establish milk contractor fund assessments by rule. Wis. Admin. Code s. ATCP 100.135 (10), establishes a fund assessment exemption for milk contractors. To be eligible, a licensee must have been a contributing milk contractor in each of the preceding five license years. The exemption does not apply if the fund balance attributable to milk contractors was less than \$6 million on February 28 of the preceding license year. The exemption also does not apply if the overall fund balance was less than \$11 million on February 28 of the preceding license year. Wis. Stat. § 126.88, sets the overall fund minimum balance at \$5 million.

The Department proposes an emergency rule that will reduce the APSF minimum balance from \$11 million set by rule to \$5 million which is the minimum set by statute. This decrease will allow the continuation of the fund assessment exemption for milk contractors. The emergency rule is necessitated by the decrease in the APSF overall fund balance due to a default by a large vegetable contractor.

The Department and the Agricultural Producer Security Council have identified the need to evaluate the entire agricultural producer security program, so that changes can be made to mitigate the impact of large defaults in the future. In December 2015, the Department received the completed actuarial study and is developing recommendations for permanent changes to the agricultural producer security program based on the findings in the actuarial study.

**Motion:**

Andy Diercks made a motion, seconded by Dennis Badtke, to approve the emergency rule Scope Statement of ch. ATCP 100. Motion approved unanimously.

## **Consumer Protection Quarterly Report**

Frank Frassetto, Division Administrator in the Division of Trade & Consumer Protection, provided an update on the Consumer Protection Bureau.

Mr. Frassetto reviewed several of the previous year's Top Ten Consumer Complaints. The top five complaints were telemarketing, landlord-tenant issues, identify theft, telecommunications, and home improvement.

### **ATCP 50–Soil and Water Resource Management (Scope Statement)**

Sarah Walling, Section Chief of the Nutrient Management and Water Quality Section in the Division of Agricultural Resource Management, presented the Scope Statement of ATCP 50.

The Wisconsin Natural Resources Conservation Service (NRCS) recently adopted a revised NRCS 590 nutrient management standard. The proposed rule may determine which aspects of the revised NRCS nutrient management standard to apply and not apply in ch. ATCP 50. The revised standard includes the following:

- Additional winter spreading restrictions, including a new risk assessment tool and planning requirements, a prohibition on nutrient applications on frozen- and snow-covered fields locally identified as areas contributing direct runoff to surface and ground water, and a prohibition on liquid manure applications during February and March in DNR Well Compensation areas or on shallow Silurian dolomite soils.
- Expanded nitrogen (N) application restrictions and prohibitions related to bedrock depth, soil types, and/or timing.
- Enhanced nutrient application setbacks including a restriction on spreading untreated manure in areas locally identified as contributing direct runoff to groundwater conduits unless the manure is substantially buried within 24 hours of application.
- Additional restrictions related to N recommendations and rates, including restrictions on late summer and fall applications of commercial N in sensitive fields (e.g. within 5 feet of bedrock).
- Increased phosphorus (P) management (Phosphorus Index and Soil Test P limits and resulting restrictions).
- Greater focus on erosion control.

This proposed rule would revise ch. ATCP 50, Wis. Adm. Code, to aid in administering Wis. Stat. ch. 92. Specifically, the rule may update current nutrient management standards for farms, by incorporating aspects of the revised NRCS 590 nutrient management standard, and clarify and update the rule as necessary to implement these revisions.

## **Motion**

Dennis Badtke made a motion, seconded by Dean Strauss, to approve the Scope Statement of ch. ATCP 50. Motion approved unanimously.

### **ATCP 51–Livestock Facility Siting (Scope Statement)**

Richard Castelnuevo, Section Chief of the Resource Management and Engineering Section in the Division of Agricultural Resource Management, along with Chris Clayton, Environmental Analysis and Review Specialist, presented the Scope Statement of ATCP 51.

Wisconsin’s Livestock Facility Siting Law (“siting law”), Wis. Stat. §93.90, was enacted to provide a clear, predictable, and more uniform framework for the local permitting of livestock facilities in this state. Under the siting law, local governments *may* by ordinance require a zoning or licensing permit (siting permit) for new or expanded livestock facilities with 500 or more “animal units.” With limited exceptions, the law prohibits local governments from requiring siting permits for smaller livestock facilities.

If a siting permit is required by local ordinance, a local government must grant or deny the permit based on standards and procedures adopted by the Department through rulemaking. Local governments have some authority to adopt by ordinance additional standards but only if those standards are based on scientific evidence and are necessary to protect public health or safety.

In 2006, the Department adopted rules in ch. ATCP 51, Wis. Adm. Code (“siting rule”) to implement the siting law. The rules spell out detailed requirements for permitting livestock facilities related to:

- Livestock Structures
- Setbacks and Property Location Requirements
- Odor and Air Emissions
- Nutrient Management
- Waste Storage Facilities
- Runoff Management

The siting rule spells out procedures and timetables for local approval or disapproval of permit applications, consistent with the siting law. It also mandates the use of state-approved permit application forms, which are designed to elicit information needed to show compliance with applicable siting standards.

Under the siting law, the Department must review the standards in the siting rule at least once every 4 years. Since 2006 when the siting rule was adopted, the Department has conducted 2 of these reviews, with the most recent review initiated in 2014. As part of the 2014 review, the Department conducted listening sessions with environmental, farm and government stakeholder groups. The Department’s Secretary also appointed a committee of technical experts to advise

the Department on possible changes to the siting standards. The expert committee provided its report to the Secretary in September 2015.

This rulemaking proceeding may modify the current siting rule, as necessary, consistent with the siting law, including updates of technical standards, modification of siting standards and procedures, and improvements in state mandated forms and worksheets.

### **Motion**

Andy Diercks made a motion, seconded by Dean Strauss, to approve the Scope Statement of ch. ATCP 50. Motion approved unanimously.

### **ATCP 21–Plant Inspection and Pest Control–Mountain Pine Beetle (Hearing Draft)**

Tim Allen, Forest Pest Program Coordinator in the Division of Agricultural Resource Management, presented the Hearing Draft of ATCP 21.

The Mountain Pine Beetle, *Dendroctonus ponderosae* Hopkins, has been described as the most destructive pest of mature pines in North America. Its major host species are ponderosa, lodgepole, and western white, but mountain pine beetle has been recorded attacking at least a half-dozen other pine species including jack and red pine. The most recent unprecedented outbreak of mountain pine beetle spread over 88 million acres of pine forests in Colorado, Wyoming, Idaho, Montana, and South Dakota, as well as the Canadian provinces of Alberta and British Columbia. Estimates of pine mortality in infested forests can reach 80%.

The mountain pine beetle may be spread by the movement of firewood, unfinished or untreated pine wood with bark, and other untreated pine wood products.

Subject to certain exemptions, this rule establishes a Department quarantine restricting the movement of host materials, potentially infested with mountain pine beetle, into Wisconsin, if those materials originated from or were exposed to the environment in an area where the mountain pine beetle is known to exist. This rule will establish a quarantine for these materials, potentially infested with the mountain pine beetle, in order to protect the forest pine resource and forest products industry in Wisconsin.

### **Motion**

Dennis Badtke made a motion, seconded by Dean Strauss, to approve the Hearing Draft of ch. ATCP 21. Motion approved unanimously.

## **Annual Gypsy Moth Treatment Plan and Exotic Pest Report**

Melody Walker, Chief of the Pest Survey and Control Section, Chris Foelker, Gypsy Moth Control Program Manager, both in the Division of Agricultural Resource Management, presented a PowerPoint to the Board regarding the Annual Gypsy Moth Treatment Plan and Exotic Pest Report.

The Gypsy Moth (*lymantria dispar*) is an invasive leaf-eating insect from Europe that was introduced in 1869. The insect feeds on foliage of more than 300 types of trees and shrubs but prefers oak and aspen trees. The insect is able to reproduce and grow in fast quantities because it has few native or natural predators.

Every year, the Department enacts their Gypsy Moth Treatment Plan, which aims to limit the movement and establishment of gypsy moth in uninfected areas through trapping and treatments that disrupt mating distribution. In 2015, the Department set up 12,000 traps that caught 100,000 male moths.

Two new exotic pests have begun to enter Wisconsin. The Brown Marmorated Stink Bug (*halyomorpha halys*) was originally identified in Pennsylvania in 2006, but originated from Asia likely in the early 1900's. The Stink Bug has spread to 42 states and is a known agricultural and nuisance pest as it feeds on 150 host plants and can cause damage during mature and immature life stages.

The Spotted Wing Drosophila (*Drosophila suzukii*) also originated from Asia and has spread to 35 states in the U.S. The insect was first identified in California in 2008 and attacks healthy fruit, as opposed to rotting fruit which is more common with other pests. The visible feeding damage reduces or eliminates marketability for many fruits.

### **ATCP 1—Administrative Orders and Contested Cases (Final Draft)**

Karley Downing, Chief Legal Counsel within the Office of the Secretary, presented the Final Draft relating to the rule ch. ATCP 1 to the Board.

The proposed rule amends ch. ATCP 1, to allow division administrators or staff to issue most of the special orders under s. ATCP 1.03(2). This will allow for clarification of the Department Secretary's responsibility to hear any appeal of a special order under s. ATCP 1.06.

Currently, under s. ATCP 1.03(2), some types of orders may be issued by the Department's division administrators or staff, while others may only be issued by the Department's Secretary or designee. Generally, all of these orders may be appealed under s. ATCP 1.06.

The authority to grant or deny a request for hearing rests with the Secretary, under s. ATCP 1.06(3). The final decision maker for any contested case is either the Secretary, or a designee

appointed by the Secretary, as defined in s. ATCP 1.01(13). If the Secretary, or his designee, is the only person who may issue many of the typical special orders of the Department, this precludes the Secretary from exercising appellate jurisdiction in any contested case hearing where he or she has already signed the initial order. This is a specific duty of the Secretary, which should not be abrogated by rule. On the other hand, if the rule is amended, allowing special orders to be issued by the division administrator, the Secretary may then exercise the duty to oversee any division's action by granting and deciding a contested case hearing, if the special order is appealed.

The Department held a public hearing on this rule on February 17, 2016, in Madison, Wisconsin. There were no attendees and no written or oral comments were received.

### **Motion**

Andy Diercks made a motion, seconded by Mark Schleitwiler, to approve the Final Draft of ch. ATCP 1. Motion approved unanimously.

### **ATCP 30, 40, 42, 50, 75 Appendix, 90, 91, 92, 93, 94, 105, 127, 134, 141—Technical Rule (Final Draft)**

Karley Downing, Chief Legal Counsel, presented the chs. ATCP 30, 40, 42, 50, 75 Appendix, 90, 91, 92, 94, 105, 127, 134, and 141 Final Draft to the Board.

The proposed rule makes technical changes (non-substantive or minor substantive changes) to the following administrative code chapters:

- Pesticide Product Restrictions
- Fertilizer and Pesticide Bulk Storage
- Commercial Feed
- Soil and Water Resource Management Program
- Wisconsin Food Code
- Fair Packaging and Labeling
- Selling Commodities by Weight, Measure or Count
- Weights & Measures
- Flammable, Combustible, and Hazardous Liquids
- Petroleum and Other Liquid Fuel Products
- Sales Below Cost
- Direct Marketing
- Residential Rental Practices
- Cherry Marketing Order

The Department held a public hearing on this rule on February 17, 2016, in Madison, Wisconsin. There were no attendees and no written or oral comments were received.

## **Motion**

Paul Palmby made a motion, seconded by Dean Strauss, to approve the Final Draft of chs. ATCP 30, 40, 42, 50, 75 Appendix, 90, 91, 92, 93, 94, 105, 127, 134 and 141. Motion approved unanimously.

## **Board Member Reports**

**Dean Strauss**– The cold chill from Lake Michigan will delay planting in the Sheboygan Falls area. Dean congratulated Wisconsin and the specialty cheese industry on their win at the World Cheese Championship. The Dairy 30X20 initiative will soon see fruition as milk production is nearing 29 billion pounds.

**Greg Zwald**– Greg was recently invited to the local Rocky Branch Watershed Group meeting. He enjoyed participating and hearing the different perspectives from the diverse attendees. Greg also went to the MOSES conference, where he heard some great ideas that could be melded into conventional farming techniques and hopes to see more of a partnership in the future. Greg's farm, White Pine Berry Farm, was recently accepted into the Saint Paul's Farmers Market, which provides an exciting new marketing potential.

**Andy Diercks**– Andy recently enjoyed a vacation in Florida to celebrate his sister's 20<sup>th</sup> wedding anniversary. He also recently traveled to Washington, D.C., lobbying on behalf of the UW. He expressed frustration at the timing delays and made a comparison of the Genetically Modified Organisms (GMO) debate on the national level to the high capacity wells issues here in Wisconsin. The potato market is struggling at this time.

**Dennis Badtke**– Dennis was intrigued by the Farm Center presentation and surprised that they have not seen an increase in calls as Badgerland Financial is seeing a fair number of farmers struggling to make ends meet and pay operating rolls. Badgerland Financial is reporting dairy construction numbers down with little expansion movement. There is also a reduced number of sales and number of acreage being transferred. Dennis believes he sees the market trying to find itself right now as sale prices have been high in certain areas and low in others. Badgerland Financial will be conducting their July study which will provide more guidance on trends.

**Miranda Leis**- On the organic industry side of Organic Valley, supplies of inputs are finally meeting demands which is resulting in a slight slowdown in procurement. This means they can devote more time to optimizing farms and helping new farms start or continue their transition period, which usually takes three years. Organic Valley was involved in several of the workshops and hosting international visitors to the MOSES conference. Bill Tracy, recipient of the nation's first endowed chair focused on plant breeding for organic crops, supported by Organic Valley and Clif Bar & Company, is putting efforts into organic high-breds. On the grain side of Organic Valley, organic imports from other countries are driving down the cost of corn dramatically. This is changing the way organic growers are planning their crops moving forward as they are trying

to balance out their portfolios. The home front has been busy with Miranda's children in basketball tournaments and archery.

**Mark Schleitwiler**- Belgioioso Cheese has been busy more than doubling their distribution center, which will start operation April 4. Mark was pleased to see Belgioioso win several awards at the World Champion Cheese Contest. He also recently went on a trip to Mexico, where he found Wisconsin cheese available there.

**Paul Palmby**- Seneca Foods has all their contracts finalized and will start planting peas in southern Illinois in the next two weeks. The large pea crop last year dwarfed the pea acreage this year but beans and corn acreage will be slightly higher than normal. Seneca Foods has been spending a lot of time trying to formulate a plan for adhering to the new GMO labeling laws in Vermont. Mr. Palmby expressed frustration over the changes and stated that there needed to be federal intervention and leadership on the subject.

### Secretary's Report

The five proposed Final Draft administrative rules approved by the Board will be submitted to the Governor's Office for their review. This review will be expedited as the Legislature has requested administrative rules that need to be referred to committees, be submitted by the end of March. If an Agency does not submit their administrative rules by this deadline, the rule will not be referred to committee until January 2017, thus causing significant delays to the administrative rule effective date.

The Producer Led Watershed Grant application materials are now online. Applications will be accepted through April 1. The Department held two webinars, attended by over 60 people, to introduce the program and discuss what applications should include in their request for proposals.

A third class of Master Meat Crafter's graduated on January 22, consisting of 25 students. The course is offered through a partnership with the Department and the UW-Madison Meat Science Extension. It is a two year training course on meat science and specialty meat product and is similarly structured to the Master Cheesemaker course.

On March 16, the Department welcomed the final three, of eight total, Department of Health Services (DHS) employees who moved into the Division of Food Safety space on the third floor. Effective July 1, the Food Safety and Recreational License unit at DHS will be consolidated to the Department. The new division will be called the Division of Food and Recreational Safety.

The Wisconsin Agribusiness International Center recently contacted the USDA Food Safety and Inspection Service (FSIS) on behalf of McFarlane Pheasants of Janesville, after a \$300,000 order to Japan was held up due to a misunderstanding over a regulation interpretation. As a result of Department's communications, an agreement was reached between FSIS and the Japanese government within 48 hours.

Wisconsin commodity prices have taken a hit with farm profits significantly lower in 2015 compared to 2014. It is estimated that net farm earnings fell nearly \$1.6 billion, largely because milk sale receipts were down a like amount. 2016 average milk prices will be at or slightly below 2015 levels. Feed prices will remain well below the levels of the last few years.

Governor Scott Walker announced that Holsum Dairies of Hilbert was named the 2016 Innovative Dairy Farmer of the Year in January. This is a national award given annually by the International Dairy Foods Association and *Dairy Today* magazine. This is the fourth time a Wisconsin farm received the award in its 18-year history.

The National Association of State Departments of Agriculture (NASDA) Winter Policy Conference was held January 11, in Washington, D.C. The Board of Directors established NASDA's 2016 policy priorities, which included: international trade and harmonization, FSMA implementation, rolling back Waters of the U.S. (WOTUS), and pollinators.

On February 11, the Secretary met with Food & Drug Administration staff at the Center for Veterinary Medicine in Washington, D.C., to discuss the Food Armor program. Food Armor is an on-farm program to ensure food safety (of both meat and milk) and responsible medication use on dairy farms. He was joined at the meeting by the Executive Directors of the Wisconsin Veterinary Medical Association and the Professional Dairy Producers (PDPW).

The Secretary recently spoke at PDPW Regional ACE meetings in Eau Claire and Wisconsin Dells. Agricultural Community Engagement (ACE) is a partnership between the Wisconsin Towns Association and Wisconsin Counties Association that keeps producers and community leaders engaged in dialogue about important agricultural issues at the local level. Through seminars, farm tours and community Twilight Meetings, ACE fosters ongoing communication about the current and future role that dairy farms play in our local communities. The Secretary received questions about UW-Extension, the pollinator protection plan, DriftWatch, and Producer-Led Watershed Projects.

The Secretary was also a judge in the Midwest Foodservice Expo college culinary competition, where he toured the trade show, which included more than 30 companies in the Something Special *from* Wisconsin Pavilion. The Midwest Foodservice Expo is where buyers can meet suppliers from every segment of foodservice. A high energy atmosphere where hundreds of foodservice suppliers meet thousands of industry decision makers to get business done.

The Governor held his fourth "Cabinet on the Road" day. Each Cabinet member spends part of the day touring or meeting with businesses and schools to listen to the concerns of local job creators and their partners to determine how the state can help them create more jobs and achieve further success in Wisconsin. These sessions are also an excellent opportunity for Cabinet members and the Governor to ask questions about the impact state government has on the private sector. At the end of the day, the cabinet members convene together and share their experiences. The Secretary visited the Southwest Technical College in Fennimore, Quality Liquid Feeds in Dodgeville, and Shullsburg Creamery in Shullsburg.

### **Future Schedule and Agenda Items**

The Board is scheduled to meet March 22, 2016, in Madison.

### **Adjournment**

By unanimous consent, the Board adjourned at approximately 2:17 p.m.

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Miranda Leis, Board Chair

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Dennis Badtke, Secretary