

BOARD OF AGRICULTURE, TRADE AND CONSUMER PROTECTION MINUTES

September 17, 2014

The Board of Agriculture, Trade and Consumer Protection met on September 17, 2014, beginning at 9:00 a.m. for a tour of Cranberry Creek Cranberries located at 13th Avenue N, Necedah. The Board then held its official business meeting at the Necedah Community Siegler Memorial Library, located at 217 Oak Grove Drive, Necedah, beginning at 11:30 am. 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 11:24 a.m.

Members Present

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

Minutes

Motion

Doug Wolf made a motion, which was seconded by Dean Strauss, to approve the July 23rd Board meeting minutes. Motion was approved unanimously.

Public Appearances

Tom Lochner, representing the Wisconsin State Cranberry Growers Association and the Wisconsin Cranberry Board, came in support of ATCP 142, the Cranberry Marketing Order. The Cranberry Growers Association and the Wisconsin Cranberry Board have both worked closely with the department staff on the amendment to the order and encouraged the Board to approve the final draft.

Rosalie Murphy appeared before the board to encourage the department to fill the state drainage district engineer position. The state drainage engineer plays a critical role as a mentor, educator, interpreter and guide to most drainage boards. Over time, drainage has become more than just an agricultural focus and is now an urban concern as well.

Norman Parker, chairman of the Juneau County Drainage Board and representing the Wisconsin Association Drainage District, came before the board to request the department and

board to support filling the state drainage engineering position. Within the last 50 years, many drainage systems have not been maintained. While permits from DATCP and the DNR are necessary to start the cleanup process, a state drainage engineer is the bridge to working with the public on these steps. Drainage is public welfare and affects more than just the agricultural community. Norman also mentioned his concern for sand fracking in Wisconsin and whether there is correct chemical and water disposal occurring.

Greg Lowe, administrator of the Juneau County Land and Water Resource Department, also echoed the concerns about needing the state drainage engineer to provide guidance, answer questions and come out to the county drainage board meetings.

ATCP 142-Cranberry Marketing Order (Final Draft)

Mike Bandli and Staci Ashby, from the Division of Agricultural Development, presented the final draft for ATCP 142 relating to the Cranberry Marketing Order.

Wisconsin produces more cranberries than any other state in the nation. In 2012, Wisconsin growers produced 4,830,000 barrels of cranberries. Cranberry is the state's No. 1 fruit crop in both value and acreage. The cranberry industry currently provides nearly \$300 million annually to the state's economy and supports approximately 3, 400 jobs across the state.

Cranberry assessments have been used to effectively expand the market for the cranberries. Assessments also support crop and environmental research including sustainable production practices, nutrient management, water conservation and water quality protection. The current maximum rate of assessment of ten cents per barrel has existed since 1983. To continue successful marketing and research, the Cranberry Board believes increased funding is required.

The proposed rule increases the maximum assessment authority of the cranberry marketing board from ten cents per barrel to a maximum of 15 cents per barrel beginning the year this amendment becomes effective, then increasing to a maximum of 20 cents per barrel beginning in 2017, and then to a full maximum of 25 cents per barrel beginning in 2019.

DATCP held two public hearings on July 29, 2014, one in Wisconsin Rapids and the other Tomah. Following the public hearings, the hearing record remained open until August 12, 2014 for additional written comments. Of those who testified and submitted written comments, eight supported the proposal and two opposed adoption of the proposal at this time because of the difficult economic times for a large segment of growers. Two supported the rule if the monies are used for the economic benefit of the growers. The proposed rule was modified slightly to incorporate minor editorial changes suggested by the Legislative Council Rules Clearinghouse.

Motion

Dennis Badtke made a motion, seconded by Mike Dummer, to approve the final draft rule of ATCP 142. Motion approved unanimously.

Wisconsin Agricultural Statistics Services (WASS) Report

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

- Processing Vegetables Report
 - Snap Beans for processing is forecast at 323,800 tons, up from last year.
 - Contracted sweet corn is anticipated to total 544,100 tons.
 - Processing green beans is predicted to fall 7% to 70,290 tons.
- Cash Rent Values
 - Wisconsin cash rent value per acre on on-irrigated cropland averaged \$130.00 per acre in 2014.
 - Non-irrigated cropland rents ranged from an average of \$21.50 per acre in Ashland County to \$231.00 per acre in Lafayette County.
 - Twenty seven counties had average cash rents less than \$100.00 per acre in 2014 in Wisconsin.
- Production Report
 - In July, 2.39 billion pounds of milk were produced in Wisconsin.
 - Milk production in 23 major states totaled 16.4 billion pounds.
 - As of July 1st, Wisconsin had 10,209 milk cow herds, down 553 herds since August 2013.
 - The 2014 cranberry cop is at 8.57 million barrels.
- Price Report:
 - August price of \$24.10 per hundredweight of milk.
 - Corn sold for \$3.70 per bushel.
 - Soybeans sold for \$12.40 per bushel.
 - Alfalfa hay sold for \$130 per ton down \$30 per ton since last August.
- Crop Progress Report/Concerns:
 - Corn is 49% good.
 - Soybeans are 48% good.
 - Soybean dropping leaves is at 11%.
 - Top soil moisture 75% adequate.
- Upcoming Surveys
 - On September 30, NASS will release the Small Grain Summary for 2014.
 - Vegetable chemical use survey.
 - ARMSII- Potatoes, Corn chemical use
 - Row Crops CAPS
 - December Ag survey

**ATCP 88, 70, & 75 Egg Grading, Handling, Labeling; Food Processing Plants;
Retail Food Establishments (Final Draft)**

Steve Ingham, Division Administrator for the Division of Food Safety presented the final draft of ATCP 88, 70, and 75.

The Division of Food Safety has received numerous inquiries requesting clarification of the licensing and inspection requirements for shell eggs, particularly from people who seek to sell eggs at their farm or at a farmers' market. The rule was also developed in response to a request from the legislature. The Assembly Committee on Consumer Protection reviewed ATCP 88, Egg Grading, Handling and Labeling and identified inconsistencies and suggested potential improvements to the rule. Further, this rule will implement 2013 Wisconsin Act 245, which exempted egg producers with a flock of not more than 150 birds who sell eggs directly to the consumer on the premises where the eggs were laid, at a farmers' market or on an egg sales route from obtaining a food processing license if they meet packaging and labeling requirements.

This proposed rule is a comprehensive revision of food safety regulations related to eggs. The rule repeals the existing ATCP 88, Egg Grading, Handling and Labeling and comprehensively rewrites it to clarify the regulatory requirements applicable to egg producers and egg handlers, and makes minor revisions to ATCP 70 and 75. The rule consolidates egg-related requirements into one rule, reducing the need for egg producers to consult multiple chapters of rules to understand regulatory requirements. The proposed rule will also help businesses by eliminating the requirement for small-scale egg producers to hold a food processing plant license when selling eggs at a farmers' market, on an egg sales route, or at an egg producer's farm. The proposed rule removes obsolete provisions in the existing rule, provides explanations to improve rule clarity, and spells out federal registration requirements that must also be met by some egg producers and egg handlers. If adopted, the rule will assist those people who seek to sell a small number of shell eggs, as well as those who operate larger egg production businesses, by clarifying licensing and inspection requirements.

DATCP held four public hearings:

July 15, 2014	Wausau, Wisconsin
July 18, 2014	Mauston, Wisconsin
August 4, 2014	Madison, Wisconsin
August 6, 2014	Fond du Lac, Wisconsin

Following the public hearings, the hearing record remained open until August 20, 2014 for additional written comments. Two people attended the hearings and one of the attendees also submitted written comments. The proposed rule was modified based on the comments received during the hearings and minor editorial changes were made as suggested by the Legislative Council Rules Clearinghouse.

Motion

Mike Dummer made a motion, seconded by Dennis Badtke, to approve the final draft rule of ATCP 88, 70 and 75. Motion approved unanimously.

ATCP 104 – Leaf Tobacco Buying, & Selling (Final Draft)

Sandy Chalmers, Division Administrator in the Division of Trade & Consumer Protection, presented the final draft of ATCP 104.

The existing ch. ATCP 104, Wis. Adm. Code, regulates leaf tobacco buyers and the selling of their crop. This rule was originally promulgated as Department of Agriculture General Order #138 in 1952. At that time, tobacco farming was a prominent business in Wisconsin and much of the crop was sold in cash markets. This rule was necessary to ensure fair transactions between growers and buyers.

Today, the crop is generally produced and sold under contract. This means that ch. ATCP 104, Wis Adm. Code, as it is currently written, is irrelevant to the current industry. The department is requesting this rule be repealed.

DATCP held one public hearing on July 9, 2014, in Madison, with no attendees or written comments. The proposed rule was modified slightly to incorporate minor editorial changes suggested by the Legislative Council Rules Clearinghouse.

Motion

Mike Dummer made a motion, seconded by Dean Strauss, to approve the final draft rule of ATCP 104. Motion approved unanimously.

ATCP 134– Residential Rental Practices (Final Draft)

Sandy Chalmers, Division Administrator for the Division of Trade & Consumer Protection, along with Michelle Reinen, Director of the Bureau of Consumer Protection, presented the ATCP 134 final draft.

DATCP enacted ch. ATCP 134, Wis. Adm. Code, in 1980 with a revision made in 1998. The existing rule regulates rental transactions between landlords and residential tenants.

In 2011, Wisconsin Act 143 made changes to landlord tenant interactions relating to:

- Disclosures required before entering into a rental agreement.
- Returning security deposits.
- Withholding security deposits.
- Prohibiting certain rental agreement provisions.

- Violations of Landlord Tenant law may constitute a violation of the Unfair Trade Practices Law.

2013 Wisconsin Act 76 also made additional changes to the landlord tenant requirements in ch. 704, Stats. Including:

- Disposing of personal property left behind by a tenant.
- Damage to premises due to action or inaction of the tenant.
- Check-in sheets.
- Requiring notice of domestic abuse protections.
- Prohibition on rental agreement terms that allows Landlord to terminate tenancy if a crime is committed in or on the rental property.

Due to these changes, ATCP ch. 134 was revised to better conform the rule to the provisions of ch. 704, Stats., and ensure that enforcement of the rule will not change a right or duty as provided within the statute.

DATCP held one public hearing on July 9, 2014, with four attendees at the hearing. None of the attendees provided testimony or registered in support or opposition of the proposed rule. Two written comments were received regarding the proposed rule. The proposed rule was modified slightly to incorporate minor editorial changes suggested by the Legislative Council Rules Clearinghouse.

Motion

Miranda Leis made a motion, seconded by Dennis Badtke, to approve the final draft rule of ATCP 134. Motion approved unanimously.

Consumer Protection Bureau (Report)

Sandy Chalmers, Division Administrator, and Michelle Reinen, Director of the Bureau of Consumer Protection in the Division of Trade & Consumer Protection, provided an update on the Consumer Protection Bureau. They 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.

Board Member Reports

Dennis Badtke- Dennis thanked Nicole Hansen for the tour of her cranberry operation earlier that morning and for the DATCP staff that organized the tour.

Andy Diercks- Andy congratulated Susan Buroker on receiving her award recently and thanked Nicole Hansen for the tour that morning. He appreciates being able to see the diversity of

Wisconsin products and meet with local producers. The potato harvest has been underway for the past month. The early crop was not great due to rain and some hail damage but the later crop is looking more promising. Andy is also focused on the impact to high capacity wells with the recent Milk Source court decision.

Mike Dummer- Cropping in the Lacrosse area looks very good right now. The corn and soybeans are maturing right on schedule. Mike is hoping for a warmer October to help finish drying out the corn so he doesn't have to use as much propane for drying and can keep the elevator running quickly. In July, Mike welcomed home his daughter back from Kenya, Africa, where she was serving in the Peace Corps. Mike also congratulated Susan Buroker on her recent award and said she was very deserving of it.

Dean Strauss- The dairy world has been great this past year. High milk prices have helped ease some pains but Dean is cautious for when the prices may come back down. Cropping has also been great with very little dry spells.

Doug Wolf- This year has proven to be a good crop year. Over the summer Doug purchased a small meat locker plant in the Viroqua area and has already opened the processing end of it. The retail side is expected to open October 1st. Doug congratulated Susan Buroker on her recent award and thanked the Secretary for joining the National Association of State Agricultural Departments (NASDA) on their stance toward the EPA.

Miranda Leis- On the farm, Miranda is seeing the best crops that they have had in three years with corn and alfalfa yields very high. The summer was also busy with the kids showing animals at the county and state fair. At work, the Cashton office project was reinitiated recently and is projected to wrap up in early 2016. With the new space, the Cashton campus can house close to 450 employees while the Lafarge office can hold an additional 350 employees. The market this year is different than last in that there is a high demand currently for organic products so work has been very busy trying to keep up.

Mark Schleitwiler- Mark had a good summer with a recent trip to Germany and France where he was very impressed with the architecture there. Once back, he moved his daughter to Montana to start grad school. On the work front, Mark has been working a few more days than originally planned in his retirement. Belgioioso is doing well even with the high milk prices as of late.
Attachment

Secretary's Report

Secretary Ben Brancel spoke highly of Assistant Deputy Secretary Susan Buroker's recent receipt of the Douglass-Irvin Administration Award, which was presented by the National Association of State Departments of Agriculture on September 13th during its annual meeting in Burlington, Vermont. The award is given for outstanding work within a state agency to improve operations and efficiency. The association presents the award to one person each year.

The Waters of the US rule continues to draw attention and resources away from other important issues such as phosphorus, nitrogen, non-point, pollution etc. In the attempt to clarify the rule, the EPA has in effect “muddied the water” more. The Secretary along with others recommends withdrawing the rule at this point and starting over to clear up any confusion and negativism.

The Secretary recently welcomed 241 buyers from around the US to the 2014 US Soy Global Trade Exchange conference in held in Milwaukee. This event was held in Iowa last year but due to the department’s international trade team staff efforts, Wisconsin was chosen to host the event this year. Buyers came not only for soy products but also learned about Wisconsin’s other diverse products.

The National Association of State Departments of Agriculture (NASDA) recently held its annual meeting in Burlington, Vermont. A major topic of discussion was the FDA’s highly anticipated Food Safety Modernization Act (FSMA) rule revisions. Michael Taylor, Food and Drug Administration’s Deputy Commissioner for Foods and Veterinary Medicine spoke to the group regarding the Produce Safety, Foreign Supplier Verification Program and Preventative Control rules, which are all still currently being reviewed by the Office of Management and Budget (OMB). Two of the rules are required to be finalized by mid to late 2015 with the other in 2016. Mr. Taylor said that produce is the most challenging part of the law and water quality is the most complicated. Issues include microbial standards, testing requirements, remedies, and alternative approaches to compliance when standards are not met. The FDA’s FSMA Operational Implementation Strategy will focus on compliance and collaboration with the community, not enforcement. The FDA will be partnering with the states within NASDA to assess state laws, resource needs, training, education, outreach to industry, timelines and benchmarks for implementation. Throughout the process, DATCP has worked with the FDA and NASDA on behalf of the consumers and producers to make sure the federal government gets the new food safety rules right throughout the rule-making process, as well as implementation.

The Secretary met earlier this month with members of the Wisconsin Cheese Makers, Professional Dairy Producers of Wisconsin, Wisconsin Farmers Union, Dairy Business Associates, the Cooperative Network, and Wisconsin Dairy Products Association about changes that may occur in the revision of ATCP 60, ATCP 80 and the Food Safety Sampling Program. ATCP 60 currently relates Dairy Farms while ATCP 80 relates to Dairy Plant Regulations.

Secretary’s Office staff is assisting USDA’s Foreign Agricultural Service in its annual orientation tour for international agricultural attaches, taking place this year in Wisconsin September 22-27. Twenty-six foreign embassy staffers will have meetings and site visits in Milwaukee, La Crosse, Arlington, Tomah and Madison, including a Specialty Crops and Food Processing Roundtable at DATCP Tuesday, September 23.

The agency does have an engineer in Appleton currently filling in for the state drainage district engineer until the position description is updated to the current needs and filled. The Secretary will also look into having a legal staff member be a point of contact for questions regarding statutes and rules and how to interpret them.

The Livestock Facility Siting Technical Review Board will meet for the first time on September 18th to review current livestock siting standards to determine if they align with the changing agricultural practices while still protecting the environment. The panel consists of nine experts with experience ranging from nutrient management to odor and engineering. The committee will produce a report to the Secretary which will be taken into consideration when updating ATCP rule 51, which focuses on livestock facility siting.

While Wisconsin has not publically lost any sales yet because of railway issues, the Secretary is focused on this topic and is working with other states and organizations to try to improve the railway situation. The railway system in Wisconsin is critical in moving grain, forestry products, coal, food ingredients and more. The Secretary recently met with the Consulate General from Canada to talk about the fines potentially being levied to railway cars for not moving enough tonnage of grain in Canada. This would have a negative impact in Wisconsin however because there would be a shortage of railway cars available here as they would try to meet the Canada obligation first to avoid fines. A letter was also written to the Surface Transportation Board, the BNSF Railway organization, and to the Midwest state departments of agriculture outlining the importance of the railway system. The Wisconsin Manufacturers and Commerce Association expressed their interest in buying more railcars and hiring additional crews to move forest logs and lumber products.

Future Schedule and Agenda Items

The Board is scheduled to meet November 19th in Madison. The Secretary indicated that a tour of the new Metrology lab would be available at a future board meeting. Board Chair Andy Diercks requested to see the 2015 board meeting dates schedule at the November board meeting.

Adjournment

By unanimous consent, the Board adjourned at approximately 2:41pm

Andy Diercks, Board Chair

Miranda Leis, Secretary