

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

**July 24, 2018**

The Board of Agriculture, Trade and Consumer Protection (“Board”) met on **July 24, 2018** at the Mead Public Library, 710 North 8th St., Sheboygan, Wisconsin. 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 11:14 a.m.

**Members Present**

Board Chair Miranda Leis, Greg Zwald, Board Secretary Paul Palmby, Dean Strauss, Dennis Badtke, Board Vice-Chair Andy Dierks, Kurt Hallstrand, and Paul Bauer.

**Minutes**

**Motion**

Board Member Bauer moved, and Board Member Hallstrand seconded, a motion to approve the May 24, 2018 DATCP Board minutes. Motion approved.

**Alice in Dairyland (Report)**

Kaitlyn Riley of the Division of Agricultural Development provided an update to the DATCP Board on the Alice in Dairyland program. Ms. Riley grew up on a family-owned dairy farm and interned in college at a radio station. She studied journalism in college.

Serving in her current role, Ms. Riley has completed 16 television interviews and has authored 13 articles (out of a target of 16). She enjoys creating videos. Ms. Riley is aiming for a goal of 1,000 posts on social media. Thus far, Ms. Riley has driven 5,600 miles in her car traveling to different locales to promote agriculture throughout Wisconsin. Ms. Riley flew across the state with the Lieutenant Governor on Cheese Day. There was a musical written about a dairy farm in Door County. Ms. Riley enjoyed attending a dairy breakfast where she talked with many farmers.

Ms. Riley is currently involved in a campaign called “Five a day the Wisconsin way” that promotes the consumption of fruits and vegetables. She has conducted media interviews that

feature the grilling of vegetables from different areas of the state. Ms. Riley will attend the Wisconsin State Fair, the ginseng festival, a September cheese campaign, Green County Cheese Days, and the World Dairy Expo, and will participate in the Something Special from Wisconsin campaign.

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

Greg Bussler, State Statistician, updated the Board on recent production and price reports. In the U.S., soybeans reached a record high of 89.6 million acres. Prices for milk are down, corn prices are down, soybean prices are up, and alfalfa prices are up as compared with the previous year. Conditions for corn and soybeans are reported mostly in the good to excellent range. Wisconsin retains the #1 spot in the nation for cranberry production, with 64% of the nation's output. DATCP will conduct a county agricultural practices survey and a vegetable chemical use survey.

Question from the DATCP Board: Who does the surveys? DATCP trains field interviewers who go out and do the counts, based on 150 randomly selected agricultural plots

### **Bureau of Consumer Protection (Report)**

Michelle Reinen, Director of the Bureau of Consumer Protection, provided an update to the DATCP Board. The Bureau of Consumer Protection conducted 86 media interviews and issued 12 news releases and four consumer alerts. The Bureau conducted in excess of 70 informational presentations for consumer groups, seniors, members of the military, and business and trade associations. Topics range from identity theft and general consumer protection activities to the latest scams. Several long-term projects have concluded, including: A consent judgement against Sprint, resulting in an award of \$5 to 357,767 consumers; a settlement between DOJ and Wisconsin O'Connor Corporation that provides for \$510,000 in restitution to victims; and the filing by DOJ of additional charges against Matthew Ericson/Snow Angels LLC, accused of bilking seniors.

### **ATCP 93, Flammable, Combustible and Hazardous Liquids (Final Draft)**

Greg Baretta, Section Chief within of the Bureau of Weights and Measures, presented the final draft of Wis. Admin. Code ch. ATCP 93 to the DATCP Board. ATCP 93 governs 21,000 above-ground and 12,000 underground storage tanks. Rule-making began in 2011 when the rule was administered by DSPS. When transferred to DATCP in 2013, the program utilized various inputs in drafting the rule, including 232 recommendations by DSPS staff and feedback from stakeholders as to successive iterations of the rule. The rule contains numerous substantive changes, including the incorporation of 2015 EPA regulations on underground tanks, as well as cosmetic improvements.

**Motion:** DATCP Board Member Dennis Badtke moved, and Board Secretary Paul Palmby seconded, a motion to approve the Final Draft of Wis. Admin. Code ch. ATCP 93. Motion approved unanimously.

**ATCP 99 & 100, Grain Dealers and Grain Warehouse Keepers and Milk Contractors  
(Hearing Draft)**

Jeremy MacPherson, Bureau Director of the Division of Trade and Consumer Protection, presented the hearing draft of Wis. Admin. Code chs. ATCP 99 and 100. Recent legislation changed the structure of the Agricultural Producer Security Fund by combining the fund balances attributable to grain dealers and grain warehouse keepers. The legislation requires DATCP to establish an assessment rate applicable to deferred payment contracts in the milk industry. DATCP has set this rate at .0035.

Questions: After a given milk contract is successfully completed, would the Fund keep the assessment? Yes, for the same reasons an insurance company keeps premiums.

**Motion:** DATCP Board Vice-Chair Andy Diercks moved, and Paul Bauer seconded, a motion to approve the hearing draft of Wis. Admin. Code ch. ATCP 93. Motion approved unanimously.

**Secretary's Report**

DATCP Secretary Sheila Harsdorf provided the DATCP Board with the Secretary's Report. Secretary Harsdorf participated in helping to create the Governor's Dairy Task Force 2.0, in conjunction with UW personnel on the future of dairy policy. Secretary Harsdorf sent correspondence to the FDA concerning products not in compliance with FDA rules concerning milk labeling. Secretary Harsdorf informed the DATCP Board of her participation in events for June Dairy Month and Cheese Day. Secretary Harsdorf attended the ribbon-cutting of the Farm Wisconsin Discovery Center in Manitowoc, WI. Secretary Harsdorf announced that DATCP will host visitors from Columbia, Chile, Guatemala, Mexico, and Dubai in connection with the international agri-business market development Bureau. Secretary Harsdorf attended the state FFA convention, the FoxConn groundbreaking, and an Organic Field Day at Hughes Farm.

The Board adjourned for lunch.

The Board reconvened at 12:55 PM.

Prior to the Department's presentation of ATCP 10 Emergency Statement of Scope, DATCP Chief Legal Counsel Paul Dedinsky addressed the DATCP Board, as well as the assembled public, regarding the Administrative Rules Process of Wis. Stat. ch. 227. Chief Legal Counsel Dedinsky provided information related to the emergency and permanent rule-making processes

in anticipation of the DATCP Board's consideration of the ATCP 10 emergency statement of scope board agenda item.

### **Public Appearances**

**Larry Bonde**, chairman of the Wisconsin Conservation Congress, appeared before the Board to support the proposed ATCP 10. At a recent meeting of the congress, various stakeholders discussed CWD. The proposed rules are the same as the framework proposed at the congress. Some cervid farmers already have undertaken double fencing. He understands the potential downside to some deer farmers, and restricting movement to CWD-affected counties represents a reasonable compromise.

**Chris McGesheck**, representing a coalition of Ojibwe tribes as well as the Great Lakes Fish and Wildlife Commission, of which he is the vice chairman, appeared before the Board to support ATCP 10. The impact of CWD will be felt widely. He supports enhanced fencing. Venison is a major staple of tribal ceremonies and is a medicine and therefore the tribes need a viable source of wild venison. The tribal members want to be a part of the process.

**Ernie Stephens III**, representing the Oneida nation of Wisconsin, appeared before the Board to support the proposed ATCP 10. He has been a legislator and an entrepreneur. The "two-row wampum" was an agreement between the tribes and the Dutch concerning trade & commerce and symbolizes the principle that everybody should benefit from a given deal. All boats should rise. The deer industry has changed over the years as scientific understanding and the natural landscape have changed. CWD affects many species including humans and is a "living creature issue."

**Jerome Donohoe** appeared before the Board to oppose the proposed emergency rule. The DNR website notes that CWD is a disease that occurs late in life and is not a primary disease process. A disease affecting an estimated .00019% of the total deer population is not an emergency. 387,000 deer were harvested in Wisconsin last year. No epidemiological evidence supports enhanced fencing. The proposal conflicts with the memorandum of understanding between USDA and DATCP. Car accidents have killed far more deer than CWD. The USDA says that farmers CWD has never killed a human.

**Bruce Krueger** appeared before the Board to oppose the rule. Mr. Krueger is an elk farmer who has been raising elk for over 40 years. CWD is not an emergency. Increased testing is the cause of the observed increase in incidence of CWD. Farms that do not have CWD on their premises should not be punished by the rule.

**William Vyvyan** appeared before the Board to oppose ATCP 10. The rule would force deer farmers to quit the industry. Wisconsin is already more restrictive than other states. He has a hunting ranch and needs bucks from breeder farms. Hunting farms are bigger than breeding farms and thus enhanced fencing is bigger problem for them. Double-fencing his ranch, including the cost of bulldozing, would cost \$75,000. He is 73 years old and was planning to

supplement his retirement with income from his deer farm. If the rule passes, he won't comply and will depopulate his ranch. Putting 3 strands of wire around his property would require 9 miles of wire

**Wayne Hamann** appeared before the Board to oppose ATCP 10. He and his wife have participated in deer farming for 51 years. He has a hunting preserve and breeder farm. The rule is based on speculation. The rule would eliminate 50-75% of deer farms. His farm has 2.7 miles of fence and there would be a major problem posed to a 6" fence by grass & debris. He anticipates difficulty acquiring deer if deer farms become scarcer. Movement of deer is very important. Developing CWD-resistant deer is the only solution.

**Ray Hanson** appeared before the Board to oppose the emergency rule. He has been a deer farmer for 31 years and has raised 300 whitetail. In the past, regulations haven't stopped CWD. DNR admits that it can only slow CWD but not stop it. Deer farms should not be forced to spend millions of dollars when no scientific research says that double-fencing works. The last 5 or 6 farms that were discovered to have CWD were double-fenced. No one knows how CWD travels. The infection rate of deer is only 2%. The deer population has increased, so there can't be an emergency.

**Rep. Janel Brandigen** appeared before the Board to oppose ATCP 10 and to advocate for the reindeer industry. Reindeer are worth approximately \$10,000 each. People travel from all over the country to see reindeer in Wisconsin. The winter tourism industry needs the economic boost that reindeer provide. The rule punishes deer farmers who have already taken great precautions.

**Cindy Philips** appeared before the Board to oppose ATCP 10. In her business as a reindeer farmer, her freedom of motion will be greatly restricted under the rule and she wouldn't be able to travel to "clean" counties. Her farm is double-fenced. She and her husband were assured by previous officials that they would not be quarantined provided they took precautions. Her insurance company noted that her farm was very safe. She has developed clients for 16 years.

**Douglas Cox**, chairman of Menominee Indian Tribe of Wisconsin, appeared before the Board to support ATCP 10. He supports enhanced regulation. CWD is threatening tribal culture. He supports double fencing and increased monitoring of fences. He believes that you shouldn't hunt caged animals. He would prefer that there were no deer farms. DATCP should work with the tribes because of the tribe's knowledge of nature. He would like to see funding for tribes to conduct their own research. There should be an audit of the effectiveness of the oversight of CWD by state agencies.

**Donald Reiter**, wildlife biologist of the Menominee tribe of Wisconsin, supported the rule. The tribe lives in northeast Wisconsin. He has tested over 600 wild deer without detecting CWD. No other state has as many CWD-positive deer farms. He supports enhanced fencing. There is a need for a test for live deer.

**Corey Siegler** of the Wisconsin Commercial Deer and Elk Farmers Association appeared before the Board to oppose ATCP 10. CWD has been transmitted by means of vectors other than direct contact. In a study in Michigan, researchers recorded only two contacts between wild and captive deer. The rule would require expensive fencing to prevent a low probability event. Emergency rulemaking is not needed for CWD. Since the advent of CWD, no large populations of deer have died off. Hunter success has not declined. Complying with the rule would effectively take money away from research, which is largely funded by deer farmer.

**Shawn Schaffer**, executive director of North American Deer Farmers Association, appeared before the Board to oppose ATCP 10. In a study in Michigan, researchers recorded only two contacts between wild and captive deer. The rule would require expensive fencing to prevent a low probability event. Emergency rulemaking is not needed for CWD. Since the advent of CWD, no large populations of deer have died off. Complying with the rule would effectively take money away from research, which is largely funded by deer farmer.

**Roxanne Lotts** appeared before the Board to oppose ATCP 10. The rule is inaccurate as to the real cost of enhanced fencing, e.g. by omitting such things shipping costs, posts, gates, staples, etc. The economic impact of the rule would be approximately \$30 to 35 million. Many deer farms will be unable to comply with the rule in a timely fashion. The proposed fencing rules will not prevent the spread of CWD. There is ambiguity as to which agency is responsible for fencing regulations.

**James Lotts** spoke in opposition to the rule. He has been in the deer farming business for 15 years. He disapproves of electrical fencing whether placed either inside or outside of other fencing.

**Chuck Matyska** appeared before the Board to support ATCP 10. He lives on a 40-acre farm. He has been purchasing DNR licenses supporting conservation. Restricting CWD is essential to the hunting industry. DATCP and DNR need to work together. He supports enhanced fencing and the movement ban to CWD-affected areas.

**Bill McCrary** appeared on behalf of the Wisconsin Bowhunters Association to support the rule. An abundant and healthy deer herd is essential to Wisconsin, by providing jobs and recreational opportunities. CWD is a threat to economic and recreational benefits. The association supports Governor's Walker's three proposals but the proposals do not go far enough in attributing fault to the deer farm industry. Deer farms should be required to carry liability insurance for the costs of CWD-related remediation.

**Michael Arrowood** appeared before the Board to support ATCP 10. He owns two properties including 40 acres for sole purpose of hunting. He believes deer farmers should be considered eco-terrorists. CWD has been spread by human transport. A sick deer does not walk 700 miles. There was no CWD in Bayfield County until it was transported there. The deer farm industry is the problem. Twenty years ago, the epicenter of CWD was in Nebraska and Colorado, and it was transported to Wisconsin.

**Judy Domaszek** spoke before the Board in opposition to the rule. She and her family run a zoo that educates the public about conservation. Deer are a major draw for the zoo and the elimination of the deer would reduce visitation. The zoo employs or contracts with many people including contractors, plumbers, masons, etc. Zoos are already highly regulated. AZA-regulated zoos are unfairly exempt from the regulations.

**Bob Welch**, representing Whitetails of Wisconsin, spoke in opposition to the rule. Deer farmers are being scapegoated. There is a lack of knowledge re CWD. Deer farmers are not the problem. The permanent rule is better than the emergency rule. The scope statement should be amended to reflect the language of the permanent rule. The emergency rule is a straw man as the proposed fencing cannot be accomplished within 150 days. Hunting preserves are not to blame as the deer there are quickly dispatched, so those locations should not be required to double-fence. The hunting preserves face an exposure of \$15-20 million and their claims that they would go out of business are not spurious.

**Elmer Schill**, Secretary of the Manitowoc Fish & Game Association, appeared in support of the rule. His parents were dairy farmers and faced a depopulation event. CWD is jeopardizing one of Wisconsin's crown jewels. Action must be taken. CWD is likely caused by deer hunters discarding carcasses from out of state.

**Charlie Fochs** appeared in opposition to the rule. He has been raising elk since 1994. The number of animals transported from out of state is very small. Discarding of carcasses is a more likely cause of the spread of CWD. The proposed rule would kill the farms in order to save them. There should be more sympathy for deer farmers.

**Steve Hookstead** appeared in opposition to the rule. He is a deer farmer and hunter. Science does not support double fencing nor enhanced fencing. CWD has appeared on fenced farms. In 2005, he participated on an advisory panel for CWD. A scientist then predicted dire consequences if CWD were not stopped, but those consequences have not emerged.

**Adam Kuczer**, representing the Wisconsin Farm Bureau Federation, spoke in support of the rule. Cost-sharing is good. The cost of materials should be paid by state. Deer farms should be given six to twelve months to comply after acquisition of the materials. The movement restrictions should be devised in such a way that deer farms will not be driven out of business.

**Andy Lewandowski**, appearing on behalf of the Wildlife Federation, spoke in support of the rule. The origin of CWD was a farm in Canada, then CWD spread to Colorado. There should be more fencing on existing farms. There should be electronic monitoring. Deer from deer farms should be tagged as such. Deer should not be transported so as to contaminate other areas. Deer farmers chose to be involved in the industry.

**Roger Vanderloft** supported the rule. He is an outdoor writer. All deer farms should be fenced. We should do everything possible to stop CWD.

**Cindy Pagel** opposed the rule. She and her husband and son started a deer farm. Their farm was double-fenced from the beginning. Her grandchildren have learned a lot from life on a deer farm. Increased testing would reveal that CWD is everywhere. More facts and research are needed.

**Becky Heath** opposed the rule. DATCP's mission statement concerning promoting a fair marketplace is out of sync with the proposed rule. Deer farmers are only seeking a fair market.

**Brad Heath** opposed the rule. Most deer farmers love animals. He grew up on a small farm. He started raising deer as a hobby in 1994. He drew up a business plan. He installed double fencing in order to protect his herd from sick wild deer. They were promised that they would not be put out of business if they double-fenced. More regulations and even the elimination of all deer farms would not stop CWD. If there were no deer farmers, the situation as to CWD would be unchanged.

**Jeff Guerard**, representing Wisconsin Backcountry Hunters and Anglers, spoke in support of the rule. The emergency is real threat to Wisconsin's hunting heritage. A deer in his county was recently transported to Bayfield County which is not CWD-affected. There were three times as many CWD positives in 2017 testing as there were in 2002 despite a drastic reduction in the number of deer tested. The economic interests of deer farmers do not outweigh the interests of hunters. Wild, free-range hunting is the major driver of the economic benefit of hunting. The number of hunters has been declining.

**Greg Flees** opposed the rule. Over the long term, the rule won't change anything about the trajectory of CWD. The real solution is genetic. Genetic markers reflecting CWD-resistance may have been identified. Deer farmers are the solution. He can't imagine putting three strands of electrical fencing around his 1400 acres. His fence is on the property line so fencing outside would be impossible.

**George Meyer**, representing the Wisconsin Wildlife Federation, spoke in support the rule. The wild deer herd is Wisconsin's most important natural resource. There has been an uptick in discoveries of CWD on deer farms. Deer sometimes escape from farms. The emergency rule should be instituted as the permanent rule-making process takes years. Fencing requirements should be phased in.

**Jerry Knuth** spoke in support of the rule.

**Laurie Seale**, representing Whitetails of Wisconsin, spoke in opposition to the rule. Deer populations have increased in the counties that are most affected by CWD. CWD has never jumped the species barrier. The movement ban would destroy the industry. Deer farmers know that increased fencing won't help. Deer farmers are not the cause of the spread of CWD.

**Thomas Johnston** spoke in favor of the rule. He is a retired surgeon. Wildlife is part of the common heritage of the state. The neglect of the issue of CWD has worsened it. The transport of deer carcasses should be restricted.

**Patrick Eger** opposed the rule. Proponents of the rule have real jobs and hunting is a pastime, whereas deer farmers are trying to preserve their livelihood. DATCP should partner with the deer farms to pursue genetic research. He himself has consumed venison from CWD-affected animals and has not experienced ill effects.

**Rich Alsager** spoke in opposition to the rule. Deer do not belong to the government. Hunting does not decimate a population. Hunting regulations reduce the number of hunters.

**Rich Vojtik**, representing Whitetails of Wisconsin, opposed the rule. Whitetails of Wisconsin had proposed to bring an expert on CWD to give a presentation to the Board but was advised that there would be no special consideration given to such an expert. A 2006 study suggested that CWD could be transferred through saliva, but saliva transfer is possible but not probable.

**Bob Ellington** spoke in support of the rule. He is retired from a career in the forest industry. He relayed an anecdote in which a deer farmer voluntarily released four deer into the wild. Electric fencing is a reasonable and cost-effective method of accomplishing double fencing.

**Rich Sitarski** appeared before the Board to oppose the rule. He runs an elk farm and is planning to open a butcher shop. Prions can exist in the soil for many years. Double fencing will not accomplish anything. A CWD-positive could leave prions in the soil that could be transported by another animal into a deer farm. Prions in the soil of a farm could be absorbed into agricultural products that would then be transported off the farm; fencing would not inhibit this process.

### **ATCP 10, Animal Diseases and Movement (Emergency Rule) (Statement of scope)**

Interim Division Administrator Melissa Mace and Acting State Veterinarian Dr. Darlene Konkle of the Division of Animal Health introduced themselves and presented an Emergency Statement of Scope pertaining to Wis. Admin. Code ch. ATCP 10. Ms. Mace referenced two documents. The first document contained a timeline of the incidence of CWD in captive herds in the state of Wisconsin. Within the first several years after the discovery of CWD in Wisconsin in 2002, there were two CWD-positive tests per year. After that point, there were even fewer CWD-positive tests for several years. However, there was a significant uptick in 2017 and 2018, with a total of five incidents in 2018. For this reason, the Department considered the threatened welfare of deer farm cervids to necessitate a legal finding of emergency.

A number of discussion points received attention amongst DATCP Board Members during their meeting discussion, including:

- Whether the current state of affairs warrants a finding of emergency.
- The scope of regulatory authority accruing to DATCP and DNR, respectively.
- Whether ATCP 10 would dovetail with NR 16 rule.
- The nature, survivability and transmissibility of prions and what scientific research tells us about CWD.

- The incidence of CWD in wild populations versus deer farm cervid population.
- The timing and proposed staging of fencing for deer farmers.
- Divergence between the emergency rule and the permanent rule.
- Degree of effectiveness of electric fencing.
- Whether CWD is harmful to humans.
- Current rules concerning the movement of captive deer and statutes pertaining to existing fencing provisions.

**Motions:** The Board considered several motions. Board Vice-Chair Dierks made, and Board Secretary Palmby seconded, a motion that the Board deny an approval of the Emergency Statement of Scope for Admin. Code ch. ATCP 10. After further discussion, Board Secretary Palmby withdrew his second of the motion to deny approval of the Emergency Statement of Scope. Board Secretary Palmby moved to take no action, with Board Member Badtke seconding that motion. A vote was taken. Board Members Zwald, Bauer, Palmby, and Badtke voted in favor of the motion for the DATCP Board to take no action at this time. Board Members Strauss, Dierks, and Hallstrand voted to oppose the motion. Board Chair Leis abstained. Motion of the DATCP Board to take no action in regard to ATCP 10 Emergency Statement of Scope carried.

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

The Board is scheduled to meet September 20, 2018, in Madison.

### **Adjournment**

The Board adjourned at approximately 4:56 PM.

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Miranda Leis, Board Chair

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Paul Palmby, Secretary

All reports and any associated documents presented during a Board meeting can be accessed by contacting the Office the Secretary, Legal Counsel at (608) 224-5023.