

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

**September 20, 2018**

The Board of Agriculture, Trade and Consumer Protection (“Board”) met on September 20, 2018, at the Department of Agriculture, Trade and Consumer Protection (“DATCP”), 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 11:18 a.m.

### **Members Present**

Miranda Leis, Andy Diercks, Dennis Badtke, Paul Palmby, Greg Zwald, Nicole Hansen, Dean Strauss, and Kurt Hallstrand.

### **Agricultural Chemical Clean-Up Program (ACCP) Council Member Award Presentation**

DATCP Secretary Sheila Harsdorf presented Bruce Barganz with an award for his 14 years of service on the Agricultural Chemical Cleanup Council. Secretary Harsdorf praised Mr. Barganz’ outstanding contributions to the Council. Lori Bowman, Bureau Director of Agrichemical Management within the Division of Agricultural Resource Management, said it had been an honor and privilege to work with Mr. Barganz, that Mr. Barganz had been an advocate for fairness and consistency, and that he had contributed to additional activities including participation on advisory committees and two subcommittees as well as helping with the revenue expenditure policy program. Mr. Barganz thanked DATCP.

### **Minutes**

**Motion:** Board Vice-Chair Andy Diercks moved, and Board Member Strauss seconded, a motion to approve the July 24, 2018 Board minutes. Motion approved.

### **Public Appearances**

**George Meyer** appeared on behalf of the Wisconsin Wildlife Federation in support of ATCP 16 and ATCP 10 and 12. Regarding ATCP 16, the WWF has been very interested in dog-selling and is involved in legislation and rule-making. The WWF had high commendations for DATCP staff. Mr. Meyer stated that the rules are reasonable. Hunters also approve of ATCP 10 and 12.

Mr. Meyer believes that DATCP staff has done a good job with the rule. There has been a rapid spread of CWD to the central and northern part of state, mostly on deer farms. There is an average of 25-30 incidents of escapes from deer farms per year. The wild herd of deer do not have endemic CWD. DATCP should take into account the importance of wild herd.

The Board asked whether wild deer were tested for CWD. Mr. Meyer said that the DNR does testing, and although funding had been cut, he believed the funding was now being restored.

**Bob Welch** appeared on behalf of Whitetails of Wisconsin to oppose ATCP 10 and 12. He also appeared on behalf of the Wisconsin Bow hunters Association to oppose the rule in part. Whitetails of Wisconsin has estimated the total cost of enhanced fencing would be \$22.6 million. The Department's (lower) estimate reflects the cost materials, omitting labor costs. Electric fencing involves additional problems beyond the initial cost. Farms will go out of business in the absence of cost-sharing. The rule should be applicable only in the event of cost-sharing. In light of genetic research, deer farmers are the hope of the future vis-à-vis CWD.

The proposed rule requires all dogs to have brucellosis testing. In the context of hunting, Mr. Welch said that the buyer and the seller typically transact as to this issue, and no problems have emerged. Therefore, hunters should be exempt from the proposed rule.

**Bruce Krueger** appeared before the Board to oppose ATCP 10 and 12. He has been raising elk since the 1980s. He has not seen any validated research in support of enhanced fencing. The percentage of wild deer tested is less than 5%. Mr. Krueger invested a substantial amount of money invested in deer farming. It costs \$2000 to ship fencing posts from Pennsylvania. Moving carcasses is what causes the spread of CWD.

**Laurie Seale** spoke in opposition to ATCP 10 and 12. She has been deer-farming for 30 years. She asked which agency was going to enforce the rule. The rule is not about controlling disease, but about eliminating deer farmers. The rule is not a silver bullet. An electric fence will not prevent escapes. Escaped deer tend to come back to the farm. CWD is a death sentence for deer farms. If the state thinks that fencing is the answer, Ms. Seale queried why the government doesn't allow farms that are currently double-fenced to move deer to other locations. If two fences are required, half of the deer-breeding facilities will go out of business. If deer reserves fail, deer farms will also fail. Deer farms support local feed stores and equipment providers. The rule is discriminatory. Out-of-state actors can import deer without installing double fencing. Newly discovered genetic markers look promising; they are resistant if not completely resistant. Deer farmers hold the key. Wisconsin could be known for supporting this research.

**Corey Siegler** opposed ATCP 10 and 12. The proposed rules are based on the premise that some counties are CWD-free. Ashland County had 3 deer tested. The average number of deer tested is 14.3 deer. Deer farmers are scared and many are considering exiting the industry. Electric fencing will be scratching posts due to deer shedding and molting, and the electric fencing will trap deer antlers. It is impossible to control vegetation without the use of chemicals, which would likely agitate organic farmers.

**Joel Espe** opposed ATCP 10 and 12. Memorandums of understanding between the USDA and Wisconsin state that DATCP has authority over DNR. DNR should not control fencing. There is no scientific support for double fencing. DATCP's cost estimate is way off; Mr. Espe himself spent \$20,000 on fencing. His brother spent \$10 per foot on fencing, not including gates. DNR has no authority over other livestock and is necessarily biased. DNR has failed in controlling CWD. For example, elk from Kentucky need to be tested, wormed, etc. Changing the registration date for deer to August is a bad idea. The original date of March 15 occurs before calves are typically born. Newborn additions should not be counted in August. The 5-mile radius should be eliminated. DNR has bad record-keeping. No science backs up the rule.

The Board inquired into the circumstances under which Mr. Espe had double-fenced his deer farm. Mr. Espe discussed the pathway of transmission of prions via mineral blocks, hay from infected zones, and deer carcasses.

**Brian Wolf** spoke in opposition to ATCP 10 and 12. Dodge County had CWD within 12 miles of his farm. He is double-fenced. He cannot ship deer to numerous places. Paradoxically, he wishes for the spread of CWD to non-affected counties in order to free up movement. Hunting preserves should be treated the same as slaughter-based facilities. He double-fenced 10 years ago at a cost of \$17000. Putting electric fencing around his farm would require 3,744 feet of electric fencing. Electric fencing would need insulators. Three electric fence units would cost \$850. A deer farmer would need to spray around fence at least times per year. Electricity would costs from \$1800-2000 plus maintenance. Roundup is expensive and can cause cancer. Orange snow fencing is an alternative that would keep wild deer away from farms.

**Ray Hanson** appeared before the Board to oppose ATCP 10 and 12. He has spent his life as a deer farmer. Farms that have been found to have CWD have been double-fenced. A 2003 study in Michigan recorded 77,000 hours of video, but noted only two instances of deer approaching fence. There is no way to stop CWD; we have to learn to live with it. Even the DNR foresees the possibility of eliminating CWD. Most diseases are not cured. Even scrapie can be transmitted back into goats. He has 4.5 acres fenced, raises 30 does, and sells five to nine bucks per year. His total costs per year are approximately \$22,500 and his revenue is \$25,000. He would have to install a new fence on the inside of his current fence, which would significantly reduce the usable acreage of his farm. Bucks fight through fencing materials. He cannot afford to put in a double fence. The proposed rule would effectively be a governmental taking of his property.

**Carol Kubly** appeared before the Board to oppose ATCP 10 and 12. She addressed the issue of cost-sharing. The latter would help, but would still be a waste of taxpayer money. There is no scientific proof that the rule will work. Funding should go to research. Deer farms are currently breeding. She has been purchasing semen with CWD-resistant markers in its DNA. She has tested does. Deer famers have a vested interest in stopping CWD. Out-of-state visitors should not have an advantage over Wisconsin residents vis-à-vis movement restrictions.

## **Wisconsin Agricultural Statistics Services Report**

Greg Bussler, State Statistician, provided an update to the Board on the recent production and price reports. Corn production is up and is anticipated to be the highest yield on record. The soybeans crop is also anticipated to be the highest on record. Milk production is up 1%, but milk cow herds declined. Farm expenditures for 2017 are 6% up from 2016. Farm expenditures were up 6%. Prices for milk, corn and soybeans are down, but alfalfa prices are up. Land values are up from 2017; however, crop land price is 1% down. Wisconsin is still the lead mink producer in the U.S.; mink production is down 5%. Topsoil moisture is mostly adequate. Corn and soybean conditions are mostly rated good to excellent.

The Board adjourned for lunch.

The Board reconvened at 1:05 pm.

## **Animal Health Report**

Acting State Veterinarian Dr. Darlene Konkle presented an update on the activities of the Animal Health Division. The Division was continuing to observe incidences of Seneca Virus A, which resembles foot-and-mouth disease but is not a human health concern. The Division has implemented new swine rules including a provision that swine producers need not test animals prior to exhibition at “terminal” fairs and shows, that is, shows from which the swine will be transported directly to slaughter. Based on circumstances faced by producers, the Division allowed producers to transport swine to a third location between fair and slaughter. The Division has been collaborating with the USDA as to a handful of incidents of Salmonella Heidelberg infections in both cattle and humans. A working group is considering outreach and enhanced biosecurity. The Division is also working with USDA in connection with the recent emergence of African swine fever in China, a location which is far removed from the previous known location of the disease. The disease involves high mortality and morbidity as well as multiple modes of transmission, including ticks. The USDA is working with the National Pork Board, alerting stakeholders, and evaluating surge capacity for labs. The Division recently participated in a major emergency preparedness related to a hypothetical foot-and-mouth outbreak. The Division worked with state and local emergency management personnel and with industry stakeholder groups. The Division has also been working with the Wisconsin Livestock Identification Consortium (WLIC), which is developing a database that is anticipated to assist the Division in rapid trace-back in the event of a disease outbreak.

The Board asked whether the Animal Health Division learned from other states in the course of the exercise. Dr. Konkle replied that a final analysis had not yet been prepared, but noted that different states had different goals. The Board asked about the mechanism of entering data into the WLIC database. Dr. Konkle and DAD Interim Administrator Melissa Mace said that

DATCP data would be entered into the database. They explained that the system was compatible with systems in other states and would be helpful in cases of intrastate transmission.

**ATCP 16 – Dog Sellers and Dog Facility Operators**  
**(Final Draft)**

Melissa Mace, Interim Administrator of the Division of Animal Health, presented the final draft of Wis. Admin. Code ch. ATCP 16 to the DATCP Board. The underlying rule was first implemented in the summer of 2011. The proposed rule makes numerous minor changes and clarifications. More substantive changes include changes to the way certificates of veterinary inspection (CVIs) can be used; a specification of a minimum temperature for a space where dogs are housed; and a clarification that requirements for living conditions for dogs apply to outdoor environments as well as indoor spaces. The Department convened a hearing on the rule where one speaker spoke in favor of the rule. The Division received six written comments that were supportive.

The DATCP Board inquired about a requirement for brucellosis testing. Ms. Mace clarified that the brucellosis requirement was in ATCP 10 and not in ATCP 16.

**Motion:** Board Member Diercks moved, and Board Member Strauss seconded, a motion to approve the final draft of Wis. Admin. Code ch. ATCP 16. Motion approved unanimously.

**VE 1-10 – Reorganization of Veterinary Examining Board (VEB) Rules / Fee Specification**  
**(Statement of Scope)**

Melissa Mace, Interim Administrator of the Division of Animal Health, and the Interim Executive Director of the Veterinary Examining Board (VEB), presented the statement of scope for Wis. Admin. Code ch. VE 1-10 to the DATCP Board. Ms. Mace gave a brief explanation of the transfer of the VEB to DATCP from the Department of Safety and Professional Services (DSPS). The VEB and its rule-making were transferred to DATCP's umbrella, but certain provisions concerning VEB fees remained within the DSPS rules. Those fee-making provisions should be within DATCP rules.

**Motion:** DATCP Board Member Greg Zwald moved, and Board Member Nicole Hansen seconded, a motion to approve the statement of scope for Wis. Admin. Code ch. VE 1-10. Motion approved unanimously.

**ATCP 10 and 12 – Animal Diseases and Movement,  
Animal Markets, Dealers and Truckers  
(Hearing Draft)**

Interim DAH Administrator Mace presented the hearing draft of Wis. Admin. Code ch. ATCP 10 and 12 to the Board. The rule effects a reorganization of the rule for purposes of clarity and consistency. Some significant changes include changes to disease testing protocols; the scope of authority of the state veterinarian; changes to CVIs; modifications to import requirements for various animals; and a harmonization of provisions within ATCP 10 and 12.

The proposed rule prohibits the movement of deer from CWD-affected counties with the exception of transport to slaughter or out-of-state. The proposed rule also requires the installation of enhanced fencing for farms raising deer other than white-tailed deer. About 120 locations in Wisconsin fall within this category. Enhanced fencing consists of at least two of the following: A double fence, a solid barrier, and a perimeter with at least 3 strands of electrified fence. The fence is to be electrified at all times. Certain existing fences will be deemed compliant with the rule.

The Department received numerous comments from deer farmers, reindeer farms, event coordinators, and local businesses. Almost all the comments expressed opposition to the rule.

Dr. Konkle stated that the rule is based on the increasing number of positive tests for CWD. The rule is at the hearing draft stage, and DATCP expects to refine the rule draft further. Dr. Konkle also noted that there are current import requirements designed to combat CWD. Dr. Konkle agreed that more research on genetic resistance would be beneficial.

The DATCP Board and DATCP personnel discussed various points, including

- Whether the definition of a “CWD-affected area” is logical.
- Whether cost-sharing would be available.
- The statutory underpinnings for the authority adhering to DATCP and DNR in the regulation of cervids.
- The prevalence of opposition to the rule.
- The absence in the record of independent subject matter experts who support the rule.
- Whether enhanced fencing would accomplish anything useful in combating CWD.
- The respective status of the American Zoological Association and the Zoological Association of America.

**Motion:** Board Member Diercks moved, and Board Member Hansen seconded, a motion to approve the hearing draft of Wis. Admin. Code ch. ATCP 10 and 12. Ms. Hansen stated in her seconding of the motion that she and the Board expected DATCP to research public comments, cost-sharing, the regulatory activities of other states, and the impact on small business. Board Members Leis, Diercks, Badtke, Palmby, Zwald, Hansen, and Strauss voted in favor of the motion. Board Member Hallstrand voted against the motion. Motion approved.

### **ATCP 70 – Food Processing Plants (Emergency Rule Statement of Scope)**

Dr. Steve Ingham, Administrator of the Division of Food and Recreational Safety (DFRS), presented the statement of scope for Wis. Admin. Code ch. ATCP 70 (emergency rule) to the DATCP Board. The Division presented an identical emergency rule last year to the DATCP Board. A permanent rule for Wis. Admin. Code chs. ATCP 70 and 75 went before the Governor in the fall of 2017. However, issues were raised which resulted in the convening of work groups to address questions, such as the distinction between wholesale operations and retail operations and the rules that have to be followed by retailers, for instance, a grocery selling to another grocery. The Division expects to bring a modified permanent rule before the DATCP Board in November of 2018. Technically, the emergency rule would introduce two definitions: “facility” and “qualified facility.” At the moment, the Division needs the emergency rule to enable the Division to conduct inspections on behalf of the FDA without having to obtain FDA credentials and to learn new reporting practices. Operating under the auspices of the FDA is key to maintaining consistency in conduct and reporting.

**Motion:** Board Secretary Palmby moved, and Board Member Badtke seconded, a motion to approve the scope statement of Wis. Admin. Code ch. ATCP 70. Motion approved unanimously.

### **Board Member Reports**

**Board Member Greg Zwald:** On a personal note, Mr. Zwald advised that he had recently lost his mother and father. He has been speaking with farmers harvesting corn; they went without rain for five weeks.

**Board Secretary Paul Palmby:** Mr. Palmby alluded to the wet weather. He felt this was a “good year to get behind us,” citing the steel tariffs and the cancellation of an order by an EU client.

**Board Member Dennis Badtke:** Mr. Badtke commented that crop insurance does not cover declines in land value. Land prices have been holding steady; indeed, some farms were expanding. A study in July showed stable prices.

**Board Member Andy Diercks:** Mr. Diercks noted that Professor Wineman at the University of Wisconsin had passed away. He also noted that the potato crop is in jeopardy. Prices are good. Some varietals withstood the bad weather.

**Board Member Kurt Hallstrand:** Mr. Hallstrand said that he had started harvesting corn already. He managed to plant a third crop. Cattle prices have dropped. Mr. Hallstrand noted that he travelled to Sweden and visited an Angus farm. Sweden has more stringent agricultural regulations than the United States.

**Board Member Dean Strauss:** Mr. Strauss said that his milk production yields were decent or good. He reported that he lost the roof on his milk house. Mr. Strauss also noted that he recently gave an interview to CNN on tariffs and how tariffs may impact the dairy industry.

**Board Member Nicole Hansen:** Ms. Hansen said she had started harvesting cranberries last week. There is not an oversupply of whole fruit, just of concentrate. Producers have been dealing first with rain and then with hot and humid conditions. Yields are good. Finally, Ms. Hansen reported that some Chilean cranberry growers visited her recently.

**Board Chair Miranda Leis:** Ms. Leis said her community has suffered a variety of mishaps. There has been historic flooding. Some farms were obliterated. Things were worse than the news reports indicated. There had been a second storm with much concomitant suffering. The harvest suffered. Most of her personal acreage is fine. Ms. Leis expressed a need for more dry weather. Nonetheless, she indicated that her corn looks great. The organic industry, in general, is in the same situation. The general industry oversupply and the decline in fluid consumption affect organic producers, too.

### **Secretary's Report**

**Secretary Sheila Harsdorf** commented on the challenging weather the state of Wisconsin has been experiencing. Secretary Harsdorf noted that this is a difficult time for agriculture as compared with successes in general economy. Agriculture is experiencing crisis. For that reason, Governor Walker created a Dairy Task Force 2.0 with 32 members reflecting great diversity. The Dairy Task Force 2.0 met for the first time on August 13, 2018. Secretary Harsdorf stated that the Task Force will reconvene later this year.

In terms of county fair season, there is only one county fair left for 2018. The State Fair reported record attendance. DATCP enjoyed a strong presence at the fair. Secretary Harsdorf and Deputy Secretary Keith Ripp attended the Blue Ribbon events at the fair.

Secretary Harsdorf attended the National Association of State Departments of Agriculture (NASDA) meeting, participating in sessions on workforce development and emerging technologies. Secretary Harsdorf raised the issue of food labeling, emphasizing the importance of FDA enforcement of labeling in the context of consumer enticement. Secretary Harsdorf also raised the issue of milk filtration, which has been the subject of a pending rule since 2005 or 2007. Enforcement discretion does not bring certainty. Microfiltration allows for efficiency in cheese-making. Secretary Harsdorf expressed the notion that government must keep pace with new technologies.

Secretary Harsdorf made several other announcements:

- Secretary Harsdorf attended the signing ceremony between the Foxconn Health Group and the ginseng industry.

- The Department's Center for International Agribusiness recently hosted a reverse-buyer mission, involving 15 people from five other countries who came to learn about Wisconsin cheese.
- Secretary Harsdorf would like to expand the reverse-buyer mission concept to other products.
- Secretary Harsdorf indicated that she has given several speeches to various groups.
- The Department expects to participate widely in the World Dairy Expo. The DATCP Farm Center will host a booth, showcasing the "2018 Cow of the Year."
- Finally, Secretary Harsdorf noted the significance of the pending Tri-National meeting between the United States, Mexico, and Canada.

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

The DATCP Board is next scheduled to meet on November 15, 2018 in Madison, Wisconsin.

### **Adjournment**

**Motion:** DATCP Board Member Dennis Badtke moved, and Board Member Kurt Hallstrand seconded, a motion to adjourn. Motion approved.

The Board adjourned at approximately 3:30 pm.

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Miranda Leis, DATCP Board Chair

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Paul Palmby, DATCP 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.