

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

December 12, 2019

The Board of Agriculture, Trade and Consumer Protection (Board) met on **December 12, 2019**, in the DATCP Boardroom, 2811 Agriculture Drive, Madison, WI 53718. 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

Miranda Leis, Paul Bauer, Andy Diercks, Patty Edelburg, Kurt Hallstrand, Paul Palmby, Dan Smith, Carla Washington, and Greg Zwald.

Minutes

Motion

A motion was made by Paul Bauer and seconded by Kurt Hallstrand to approve the November 7, 2019, DATCP Board minutes. Motion was approved. Greg Zwald abstained from voting.

Future Meetings

A motion was made by Paul Bauer and seconded by Paul Palmby to approve the three year (2020, 2021 and 2022) Board meeting schedule. Motion was approved.

Public Appearances

Joe Ruth, on behalf of the Wisconsin Towns Association, appeared before the Board to speak on livestock siting. Mr. Ruth is very interested to see where this rule goes in the future. He is looking forward to working with the Department and stakeholders to come to a workable rule that is beneficial for everyone. Mr. Ruth wanted to remind the board of 2011 Act 21 and 2017 Act 108, and request that the Board stop enforcing and implementing the rule fee restrictions and the prohibition on financial assurances, which are not allowed by statute.

**DATCP Appreciation Award
Recipient John Manske**

Interim Secretary Randy Romanski introduced John T. Manske as the recipient of the Department of Agriculture, Trade and Consumer Protection Secretary's Commendation. Mr. Manske was recognized for his outstanding contributions and work excellence with the ACM Bureau, the Agricultural Chemical Cleanup Council and the Agricultural Producers Security Council. Mr. Manske is someone who is willing to serve and has followed up that willingness

with action. He has also provided an invaluable connection and sounding board for our DATCP staff. We congratulate Mr. Manske on this well-deserved recognition.

Update on Data Privacy Issues Division of Trade and Consumer Protection

Lara Sutherlin, Division Administrator of the Division of Trade and Consumer Protection, updated the Board on Data Privacy Issues. Ms. Sutherlin stated that under the advisement of Governor Evers and Interim Secretary Randy Romanski, they launched a Data Security and Advisory Council. In 2019 the estimate was that there is a data storage industry worth 56.8 billion dollars and that industry is going to grow in 2020 to 102 billion dollars. Out of that grows data breaches. In the first 7 month of this year there has been 3800 data breaches that were reported, which exposed 4.1 billion records.

Wisconsin has lagged quite a bit in data privacy as it has been over 10 years that we have modernized regulation. The council is using the guidance of a Verizon report that documents data breaches. In that report they indicate vulnerable sectors like education, health, finance, etc. and we used that as a guide to reach out to industry groups. The council consists of 25 people from various organizations, government, consumer advocacy groups and industry. The council started meeting in October 2019 and will meet monthly for 8 months. The goal of this council is to identify and research possible changes to Wisconsin state law, to determine the efficacy of consumer data privacy initiatives, to consider how best to protect and secure information received by public and private entities in Wisconsin, and to determine the business community's readiness to adopt potential regulatory enhancements. The council expects a report to be available for the legislature in June 2020.

Wisconsin Agricultural Statistics Survey Update Greg Bussler

November Crop Production Report

In WI, corn is expected to yield 163 bushels per acre, down 9 bushels per acre from 2018. Production is forecasted at 463 million bushels. US corn production is forecasted at 13.7 billion bushels, down 5 percent from last year. Based on conditions as of November 1, yields are expected to average 167.0 bushels per acre, down 9.4 bushel per bushel from 2018. Soybean production in WI is forecast at 79.6 million bushels. Soybean yield is forecasted at 46 bushels per acre, down 2.0 bushels per acre from 2018. US soybean yield is expected to average 46.9 bushels per acre down 3.7 bushels from last year, and production is forecasted at 3.55 billion bushels. Next Crop Production Report is the annual/final report released January 10, 2020.

2017 Wisconsin Specialty Crops

In 2017, Wisconsin had 7,676 specialty crop farms on 323,485 acres. Orchards: 1,552 farms on 8,362 acres. Berries: 1,201 farms on 23,172 acres. Vegetable: 3,157 farms on 243,441 acres. Nursery, greenhouse, floriculture and sod: 1,545 farms on 15,495 acres. Christmas Trees: 859 farms on 23,373 acres. Maple Syrup: 1,399 farms with 987,418 taps.

Farm Labor

During the week of October 6 - 12, 2019, there were 68,000 workers hired by farms in the Lake Region (Michigan, Minnesota, and Wisconsin). The hired workers received an average wage rate \$15.64 per hour, up 50 cents from October 2018. The number of hours worked averaged 41.0 for hired workers during the reference week.

Milk Production

In October, WI milk production totaled 2.57 billion pounds, up 1 percent from the previous October. Milk production in the 24 major states totaled 17.3 billion pounds. This is up 1.7 percent from the previous year. Production in TX was up over 9 percent from last September. As of November 1, 2019, WI had 7,392 milk cow herds. This is down 825 herds from November 2018. See attached charts for 10 year number of Wisconsin dairy farms and milk cow numbers. Along with a chart for 10 year average number of milk cows per farm.

Chicken & Eggs

Wisconsin egg production during October totaled 191 million eggs. This is up 12 percent from last year. The average number of all layers on hand during September was 7.36 million which is up 4 percent from October 2018.

October Prices Received

Milk price for September was \$20.50 per cwt. This was \$2.70 per cwt higher than October 2019. The US price for October was \$19.90. Corn \$3.76 per bushel up 38 cents from last October. Soybeans \$8.537 per bushel down 17 cents from last year. Alfalfa hay \$213.00 per ton up \$48.00 per ton from October 2018.

Wisconsin Crop Progress as of December 1st

Corn harvest was 66 percent complete, 22 days behind last year and 21 days behind the 5-year average. Soybean harvest was 86 percent complete, 19 days behind last year. Moisture and poor field conditions have led to the delayed harvest. Some unharvested crops would be left in the fields, particularly in areas with deep snow cover. Handling of manure continues to be a problem for dairy farmers.

Wisconsin Irrigation and Water Management

Results are from the 2018 Irrigation and Water Management Survey which is a Census of Agriculture follow-on survey. In 2018, Wisconsin farms irrigated 520,000 acres and applied 250,000 acre-feet of water. An "Acre-foot" is the amount of water required to cover one acre to a depth of one foot. This is equivalent to 325,851 gallons. 1,733 Wisconsin farms used 5,166 wells in 2018 for irrigation. Wisconsin producers relied on three sources of water for irrigation: ground water from on-farm wells, surface water on the farm, and off-farm water from a variety of sources and suppliers. Total energy expenses for pumping well and surface water in Wisconsin amounted to \$18.1 million.

Administrative Rulemaking Overview

Interim Secretary Randy Romanski introduced Angela James, Jane Landretti, and Bradford Steine to provide background on how the administrative rule process has evolved over time. Ms.

Landretti outlined the materials provided: a DATCP Rulemaking Checklist, 2011 Executive Order 50, a Rulemaking Timeline and Worksheet including certain Legislative Act Memos and Legislative Council Issue Briefs, Legislative Council Act Memos on Acts affecting contents of rules 2011 Act 21 and 2017 Act 108, and Wisconsin Statutes chapter 227.

While there are 78 steps outlined in the DATCP Board Reference Checklist for Rulemaking, Ms. Landretti provided a high-level overview of the six main steps of the process: Scope, Drafting, Hearing Draft, Final Draft, Submittal, and Legislature. The Scope kicks off the rulemaking process and sets the perimeters. In Drafting, staff can start to write the substance of the rule. The board approves the Hearing Draft. The public hearing process is not prescribed, and the agency takes direction from the board. After staff consider and respond to each public comment, the board approves the Final Draft. DATCP's rule coordinator then submits the final rule package to several locations, including the Governor's Office and Joint Committee for Review of Administrative Rules. When the rule is submitted to the Legislature, the 30-month clock to complete the rule then ends. The rule becomes effective the first day of the following month after publication. At any point in the process, the rule can be stopped.

Ms. James noted that only three agencies, the Department of Natural Resources, Department of Veteran Affairs, and DATCP have policy making boards, adding additional complexity. There are also some rules that need to involve both of DATCP's policy making boards, the ATCP Board and the Veterinary Examining Board. Rulemaking can be initiated by the department or ordered by the ATCP Board or Legislature.

Mr. Steine shared several real-life examples to illustrate the process, including an anticipated timeline for ATCP 83, which has broad support. The timeline can be extended by numerous factors. He explained that an additional hearing with ATCP 94 slowed the process down a month or two months. For other rules, some standing committees may request a germane modification. If the rule changes are significant enough, the rule may come back to the board for an additional approval. Committees can request the agency recall the rule, asking us to make changes and resubmit, or object, which would end the rule process.

Ms. James shared the substantive changes from 2011 Act 21 and Wisconsin Statutes chapter 227. Act 21 made changes to the scope of the agency's authority and had several provisions of how agencies can draft and interpret rules. Agencies may not impose standards unless explicitly required or permitted. Act 108, which went into effect in December 2017, went an additional step, making an affirmative requirement to go through rules ensuring explicit authority exists. DATCP submitted a report earlier this year, outlining rules that qualified for a quick, expedited appeal and others that need to be open to rulemaking to address issues.

ATCP 51 – Livestock Siting Update

Interim Secretary Randy Romanski, from the Office of Secretary presented an update on Wis. Admin. Code ch. ATCP 51, to the Board. Secretary Romanski stated that ATCP 51 will not be moving forward and that Assistant Deputy Secretary Angela James and Division Administrator Sara Walling will be resources to the Board for discussion.

Miranda Leis stated as related to the issues of fees for ATCP 51 and Act 108, is there an overarching expectation from the legislature of a timeline for acting on the issues? Board Counsel Jane Landretti replied that the statute contemplates that an agency shall submit a report on March 31st of each odd number year with its Act 108 report. What happens if we identify an issue on a rule between the reporting years? Ms. Landretti and Legislative Counsel note that it is up to the agency to decide once the scope statement is expired if the agency wants to go ahead with an Act 108 expedited repeal before the next report.

Paul Palmby asked if there is a statutory requirement on ACTP 51. Ms. Walling noted that the statutory requirement is for the agency to review the rule every four years, which is different than a rulemaking. DATCP has met the review requirement. Mr. Palmby asked if we want to do a new Scope for ATCP 51, do we have to wait until 2020. Ms. Walling replied, no and Ms. James clarified that rulemaking is different than the statutory review of rule. There is also no requirement to open the rule up for rulemaking before or after the statutory review of the rule.

Andy Diercks asked about DATCP staffing changes. Ms. Walling stated that Chris Clayton is now at DNR as the Section Chief for the Agriculture Runoff Management Section. DATCP will be looking to replace Mr. Clayton's position and anticipate hiring someone within 3 months of finalizing the position description.

Paul Bauer reported that from the industry stakeholders there was a lot of feedback when the original setback rules were written, that there was not enough industry representatives at the table as producers. If we go forward on ATCP 51 it would be nice to see more producers involved. The other issue that has come up is odor. In Idaho they took 90% of their odor issues off the table by having their state inspectors do an assessment. In preparation for another review, Mr. Bauer asked if we can start collecting odor data and perhaps reach out to neighboring partners to see how they handle odor. Ms. Walling stated when we get to the point of preparing another Scope Statement, we will be looking critically at engaging stakeholders, rule adjustments and the science behind any issues within the rule. Ms. James also noted that the 2014 and 2018 Technical Review Committee did not include producers, even though the 2010 committee did. In the 2022 review we will be looking at the process and trying to determine what it the best approach.

Miranda Leis asked that after a farm goes through siting, is there a DATCP employee back on that site. Ms. James stated that even during the siting process DATCP has no involvement unless it gets reported to the Board.

Greg Zwald requested further details about odor ranger. Ms. Walling stated that DATCP had a contraption back in 2006 that would be used to measure odor. Steve Ingham went to Minnesota to be trained on this fully integrated scoring method process. There is a lot of expertise coming out of Minnesota for odor modeling and odor scoring. What we came down to in the formulation of our rule is that it is difficult scoring odor because farms are expanding to become something more and you would need approval to be at that level. In conclusion we would be trying to develop an odor setback for a facility that may or may not exist at that time of the permit

application. Ms. James stated that our job is to put these standards on the books, we don't enforce or administer them. Our charge is every 4 years to do a review.

Patty Edelburg asked if we wanted to start a new Scope Statement where does that direction come from. Ms. James stated that the legislature and Board can make us start a rule process, anyone else can just ask us to. We get calls about CAFOS every day and we try to respond respectfully and rely on technical experts. The proposed changes to ATCP 52 that went out for public hearing came out of the 2014 and 2018 reviews. Andy Diercks stated that he hopes that we can do things differently when we rescope ATCP 51. He suggested on having board members interact with staff or industry through the next process. Ms. Walling is pleased with the level of dedication through the process and appreciates the Board's focus on this issue.

Secretary's Office Report

Interim Secretary Randy Romanski introduced Jay Nielson, our recently hired federal liaison to the Board. Jay comes from DNR where he worked in environmental management. We are excited and very fortunate to have Jay working at DATCP. Jay will give periodic reports to the Board from the federal level.

Governor Evers recently signed two bills into law that DATCP played a role in, one was an Access to Capital bill, 2019 Act 62, which made several changes to the agriculture loan guarantee program. The second bill is related to fuel pumps, 2019 Act 64, where it permits gas pumps to dispense through the same fueling nozzle no more than 10-15% ethanol gasoline.

Luke Bryan brought his show to Marshall, WI. We are very fortunate that the Dairy Farmers of Wisconsin and Culvers hosted a tailgate event and donated the proceeds, \$1,458.55, to the DATCP Farm Center. This donation covers counseling vouchers for four farmers.

DATCP is busy with the Data Privacy and Security Advisory Council. There is great and diverse membership in this council, everyone is dialed in and receptive to presenting recommendations to the Governor's office.

Animal Health. Dr. Konkel is representing Wisconsin at the National Alliance of State Animal and Agricultural Emergency Program in Seattle.

Division of Food and Recreational Safety. The meat and poultry division are working with a pizza franchise in southwestern Wisconsin to help them understand how to comply with Federal and State meat licensing requirements. Steve Ingham and his team are proactive working with industry to prevent future problems.

Agriculture Development. The Farm Center staff continues to make progress by planning a series of workshops and seminars for counseling in these challenging times. These are set to run from January to April 2020.

Ag Resource Management. It is the 10 year anniversary of the Ag Enterprise Area Program (AEA). AEAs are a way for local communities to encourage agriculture production and investment in local economies. There is a total of 40 AEAs in 27 counties and 112 towns in Wisconsin.

IT Amanda system. We have a renewed commitment to decommission Amanda. DATCP has set up an internal IT steering committee to help prioritize IT projects, an external work group and a specific Amanda work group for guidance. Amanda is set to be decommissioned by the end of 2020 and we will be moving to a CRM project.

Board Member Reports

Kurt Hallstrand: We have 2.5 feet of snow at home, come up and enjoy it. The cow/calf market is the lowest it has been in 8 years. On the other hand, the logging industry is doing well. There is lots of demand and the market is good.

Paul Palmby: Not much to report since his season ended in October. They are starting to work on contracts in the coming year. Things are going well.

Carla Washington: Work wise, while others see downtime this time of year we don't due to the stress of the holidays and will be monitoring situations on how they can be a service to the community. Her agency is really ramping up to start identifying populations in the emergency shelter per federal and state statutes.

Andy Diercks: People are still trying to get corn and beans off. The snow and cold weather caused some serious issues west and north of us in the potato world, which resulted in the Wisconsin market being really good. Yesterday, he attended the Discovery Farms conference where they started to talk about ground water in their area which he is happy to see this issue discussed.

Paul Bauer: The cheese markets went up and then dropped 50 cents in the last few days. Barrel cheese is down to 1.78, so we are on the downward slide of the roller coaster. We have some serious issues coming up. First, we have some farms that were not able to sell out because conditions were so poor. The other concern on farms is that forage is horrible. He sees milk prices going down and once we hit April we will be out of forage. When dairy farmers don't do well, sometimes the plants don't do well and we will have some major issues coming up that will affect our state.

Greg Zwald: As far as crops in our area very few soybeans are left. Everything got off once it got cold. There is quite a bit of corn left and farms are having a problem when trying to get the corn off the cob the kernels are breaking. At UWRF, there is excitement in that the dairy innovation hub money will be rolling in. New positions will be created and the younger professors are coming in who want to do more research. We want to keep the emphasis on education and teaching, but know there will be more research being done.

Dan Smith: He attended their annual meeting in November in Minnesota where he heard over and over that this is the worse year for economics and weather for co-ops. This week they are happy to see the trade agreement move forward and have worked through the propane distribution issues. If you are running your co-op or business the same as 5 years ago, you will not be here in 5 years.

Patty Edelburg: It is convention season. She has been to Missouri, Iowa, Indiana, Michigan, South Dakota and Minnesota recently. It is amazing what you see, the corn is standing in fields all over the Midwest. Every state was talking that the quantity is there and the quality is terrible. The National Farmers Union President has decided to step down, and there are some good candidates in the running.

Miranda Leis: This has been quite a year and hope 2020 promises at least to be an average year. There has been a lot of changes at Organic Valley. They have a new CEO, staff adjustments and seeing quite a bit of attrition in their farm supply. 2020 could be interesting from the dairy supply markets for the organic farmers. Some farmers weren't ready and resilient to the market adjustments. Ms. Leis recently took a new position at Organic Valley and is now on the dairy side and procurement. She echoed the issues on forage and feed quality. We are heading fully into the stored feed season and there is no more pasture supplementation. What does that look like and how does it affect our animals? Organic is more forage dependent than others. The economic situation with Dean Foods is concerning and in 5 years the infrastructure will look very different than it does now.

**Rebecca Cameron Valcq, Chair
Public Service Commission**

Interim Secretary Randy Romanski introduced Rebecca Cameron Valcq, Chair of the Public Service Commission (PSC) to the Board. The Governor talks about connecting the dots, we are connecting PSC to DATCP. Ms. Cameron Valcq had an opportunity to travel around the state with Brad Pfaff to talk about broadband. There is 48 million dollars allocated for broadband extension by the legislature through grants. PSC regulates electric, gas and broadband. Currently the PSC is gathering mapping information of availability and speed of broadband in Wisconsin. This is not a simple undertaking because the number who have access to broadband is wildly understated due to FCC tracking.

The first round of grant applications is due December 19, 2019 and the broadband grant winners will be announced in 2020, then the PSC will announce another round of available grants. Ms. Cameron Valcq would like everyone to spread the word that the grants are available. The PSC is trying to think of new innovative ways to make the broadband dollars stretch further. Broadband is necessary by the way we operate our farms and is essential for us to be connected. We also need to be able to leverage federal funds, state investments, and be creative on how to use existing state buildings to build more towers.

Paul Bauer stated that no broadband is an economic issue. A house without broadband will sell less than the house next door that has it. Plus no broadband access is a huge disadvantage on

home tax value. In Pierce County approximately 50% of houses don't have access to broadband. Ms. Cameron Valcq stated that a home without broadband also sits longer on the market.

Kurt Hallstrand asked what is considered rural when grants are given to companies. Ms. Cameron Valcq stated that companies don't receive the funds until the infrastructure is built. There are five counties in Wisconsin that have not received broadband dollars, but not for lack of trying. The providers say it is really expensive to run a line and need at least 1000 customers or they won't recoup their money.

Paul Bauer stated that ATT has an old exchange. He put fiber to his plant because they won't replace the copper lines anymore. ATT won't put money in rural areas because there is no exchange. Why can't PSC require old telephone services to offer one customer a different price then they offer a different customer? Ms. Cameron Valcq stated that is what happens with lack of regulatory oversight.

Paul Palmby asked if 48 million dollars is enough to address the broadband problem. Ms. Cameron Valcq noted that 48 million is a drop in the bucket and that fiber is expensive.

Ms. Cameron Valcq said that the PSC is looking into new technology of white space. Microsoft is doing research on white space and how it can be used to carry a broadband signal. There is some success and the FCC has said we are allowed to use unlicensed white space if we get there and grab it first. Broadband is the bridge between the urban centers and rural areas.

Future Schedule and Agenda Items

The Board would like a hemp update in January or February. They would also like an update on PFAS, Something Special from Wisconsin, and IT in upcoming meetings. Andy Diercks stated he would like to have a discussion on rescoping 51 by June.

Adjournment

Motion

A motion to adjourn was made by Paul Palmby and seconded by Kurt Hallstrand. Motion approved unanimously.

The Board adjourned at approximately 1:48 p.m.