

BOARD OF AGRICULTURE, TRADE AND CONSUMER PROTECTION MINUTES

March 5, 2020

The Board of Agriculture, Trade and Consumer Protection (Board) met on **March 5, 2020**, in the DATCP Board room, 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.

Members Present

Miranda Leis, Andy Diercks, Patty Edelburg, Kurt Hallstrand, Paul Palmby, Dan Smith, Carla Washington, and Greg Zwald. Paul Bauer was not in attendance.

Minutes

Motion

A motion was made by Carla Washington and seconded by Greg Zwald to approve the January 30, 2020, DATCP Board minutes. Motion was approved unanimously.

Future Meetings

The next DATCP Board meeting will be held on May 14, 2020 in the DATCP Board room, 2811 Agriculture Drive, Madison, WI.

Public Appearances

Anita Martin appeared before the Board to speak in support of ATCP 76. Ms. Martin reviewed statistics about health conditions and was surprised to see where Wisconsin was at with crypto (pool fecal response). The CDC keeps national lists on the number of crypto cases and Wisconsin is the second highest state on confirmed cases. Waterparks have guests with all different immune systems, so there is a serious public health and safety risk to regulate pools properly. Ms. Martin would like to see language in ATCP 76 regarding crypto.

Commissioner Mark Afable

Wisconsin Office of the Commissioner of Insurance

Interim Secretary Randy Romanski introduced Mark Afable, Commissioner and Nathan Houdek, Deputy Commissioner of the Wisconsin Office of the Commissioner of Insurance (OCI), to the Board. OCI's vision is to protect consumers, educate consumers and maintain a strong competitive marketplace. We want all policymakers to be thinking about the consumer because an educated consumer who understands a product is going to make better decisions. More education needs to

be presented to consumers, but bipartisan efforts such as reinsurance mechanisms have helped create more options. We have seen greater affordability and on average the price of health insurance has decreased as more players come into the marketplace and into new areas of the state.

Long term care insurance is coverage for people in nursing homes, assisted living, home day care and the like. One of the issues we've seen is that prices on insurance that was written several decades ago relied on incorrect actuarial assumptions that created under pricing. So now folks who need the coverage are seeking types of rate increases like 100%. How do we fix that? We could cap the increase, but that causes a rate need that may drive insolvency, which also may lead to a coverage gap. A solution could be leveraging technology in insurance. One example is insurers using telematics in cars. Devices can go in cars, drones can adjust claims and products can detect water leaking in a house. OCI is monitoring and learning how technology is being used for the good of consumers and appropriately.

Mr. Houdek states that the Governor created a task force to identify solutions on the cost of prescriptions. OCI is chairing the task force and TCP Division Administrator Lara Sutherlin is participating. The group is hoping to have recommendations by the end of summer. The initial price setting for prescription drugs is done at the federal level by manufacturers. The supply chain responds to that price, so there is little we can do at the state level to address that. OCI also serves on a multi-agency prescription drug purchasing committee. This committee is looking at the three main agencies that purchase drugs for the state and how can we buy bulk purchases to try to save the state money. Hoping to have recommendations by summer on that one too.

OCI doesn't control what insurance charges, but rather what the facilities are charging on the long term care services. There has been excessive medical cost inflation since the time these coverages were being written. The costs inflated far faster than what was predicted a few decades ago.

ATCP 78 – Recreational and Educational Camps Statement of Scope

Division of Food and Recreational Safety

Dr. Steve Ingham, Division Administrator and Mary Ellen Bruesch, Food Scientist from the Division of Food and Recreational Safety presented the Statement of Scope for Wis. Admin. Code ch. ATCP 78, to the Board. Dr. Ingham gave a brief overview and requested the Board approve the Statement of Scope.

Motion

A motion was made by Andy Diercks and seconded by Paul Palmby to approve the Statement of Scope for Wis. Admin. Code ch. ATCP 78. Motion was approved unanimously.

**ATCP 76 – Pools
Statement of Scope**

Division of Food and Recreational Safety

Dr. Steve Ingham, Division Administrator and Mary Ellen Bruesch, Food Scientist from the Division of Food and Recreational Safety presented the Statement of Scope for Wis. Admin. Code ch. ATCP 76, to the Board. Dr. Ingham gave a brief overview and requested the Board approve the Statement of Scope.

Motion

A motion was made by Kurt Hallstrand and seconded by Patty Edelburg to approve the Statement of Scope for Wis. Admin. Code ch. ATCP 76. Motion was approved unanimously.

**ATCP 134 – Residential Rental Practices
Statement of Scope**

Division of Trade and Consumer Protection

David Woldseth, Policy Analyst from the Division of Trade and Consumer Protection presented the Statement of Scope for Wis. Admin. Code ch. ATCP 134, to the Board. Mr. Woldseth gave a brief overview and requested the Board approve the Statement of Scope.

Motion

A motion was made by Paul Palmby and seconded by Patty Edelburg to approve the Statement of Scope for Wis. Admin. Code ch. ATCP 134. Motion was approved unanimously.

Consumer Protection Update

Division of Trade and Consumer Protection

Laura Sutherlin, Division Administrator from the Division of Trade and Consumer Protection presented a Division update to the Board. The Bureau of Trade was notified last summer that a company called Asbury Grain (warehouse facility) had significantly less grain than what it should have had. Asbury could not come up with the missing grain and upon further investigation, Asbury was not timely paying their farmers. As a result DATCP issued an order barring Asbury from moving any grain outside their facility without approval. Trade has also been involved in another issue with Southwest Dairy. This is a small dairy who failed to pay farmers for purchased product. DATCP revoked its milk contractor license. On a positive note, Trade also facilitates the public warehouse keeper licensing program and one mission with this program is to complete more outreach in communities.

Wisconsin Agricultural Statistics Survey Update

Greg Bussler

Greg Busser, State Statistician from the USDA National Agricultural Statistics Service presented his March 5, 2020 agricultural statistics on corn and soybean county estimates; vegetables; December prices received; milk production; the results from the January livestock surveys; and the farms and land in farms statistics. See Mr. Bussler's report which is included in the Board meeting packet for more specific details.

Division of Agricultural Development Update

Division of Agricultural Development

Krista Knigge, Division Administrator for the Division of Agricultural Development (DAD) presented a Division update to the Board. DAD is different than any other division at DATCP because it is non-regulatory and its primary objective is to develop deep relationships with farmers. This being said, it can be difficult to track success using the farm center hotline because as those close relationships form, the more direct contact is made with employees and they don't use the 800 number.

Jayne Krull, Farm Center Bureau Director stated that the farm center 800 line takes 2200 calls per year. The most common calls were farm transition calls, but now they are turning into farm viability work calls. There is a trend to an increasing sense of urgency, and not just in dairy but also grain and livestock. We are also busy with farmer mental health initiatives, but unfortunately do not have mental health workers on staff. When there is a mental health need, we refer to counselors.

Mark Rhoda-Reis, Division of Agricultural Development Bureau Director stated that the exports were as expected by ending the year at 3.3 billion. Canada, Korea, Mexico, China and Japan are the top exporters. There is also a potential deal with the UK as brexit moves forward. As for the Coronavirus, things are down globally and the livestock exhibition has been rescheduled.

Livestock Siting and other DATCP Related Legislation Update

Office of the Secretary

Assistant Deputy Secretary Angela James and Legislative Advisor Bradford Steine presented a legislative update to the Board. Mr. Steine stated that the Assembly is adjourned for the year. The only bills that are still alive at the moment are the ones that passed in the Assembly and are awaiting action in the Senate. During this legislative biennium, there have been 14 Executive Orders that have had an agency impact and we have tracked 124 bills relating to DATCP. Of those 124 bills, we provided expert testimony or took an agency position in committee on 24 of the bills. We have also completed eight administrative rules since last January. A few legislation and rule highlights are as follows:

Hemp 2.0-Assembly Bill 206/Senate Bill 188. This legislation gave DATCP the ability to await the federal guidance on hemp, which came out on October 31st but unfortunately did not give

additional staff for the program which is a concern for the hemp department. We are actively monitoring what is going on at the federal level. This bill does give DATCP rule making authority and emergency rule making authority to make sure we will be in line with the federal rule when it comes out. Ms. James stated that hemp is in a state of flux at both the federal and state level. As an agency we implement the program through our rules. Hemp 1 passed and that rule is set to expire June 1, 2020. Staff is currently writing emergency rule 2 for Hemp which will have to be in effect June 1, 2020 to continue business as usual while we wait for the new federal program to become effective November 1st. The state plan and emergency rule may have to change depending on what the federal program will do.

rBST affidavits-Assembly Bill 747/Senate Bill 685. This legislation reflects a DATCP rule change already in progress, ATCP 83, and was signed into law earlier this week. We still have to update our rule so that it lines up with the passed bill.

Livestock siting: Assembly Bill 894/Senate Bill 808. This legislation makes numerous changes to the livestock facility siting law and presents various DATCP implementation challenges. This bill went very quickly and was scheduled to pass through the Assembly and Senate but was pulled at the last minute. Ms. James stated that one of the big drivers for the new law was expressed by the towns that DATCP doesn't have legal authority to impose a fee on applications. The live stockers had concerns not knowing how much the towns would charge. Under this bill the towns would no longer have the burden of doing the technical review, that burden would be moved to DATCP. DATCP was not involved in the writing or in the pulling back of the bill.

Above Ground Storage Tanks: Assembly Bill 993/Senate Bill 877. This legislation would allow DATCP to once again inspect aboveground storage tanks of less than 5,000 gallons. As of October 2019 DATCP was no longer doing inspections of these tanks. We tried multiple angles to get a statutory fix done, but it kept getting pushed back. Ultimately what we were able to get done, is to have two Representatives introduce the bill. Ms. James states that DATCP doesn't always do the inspection themselves, sometimes it is done by the local government. There is a significant concern at the local level on not having the program for maintaining the inspection of this tanks because they can charge a fee. The regulated community supports this program.

ATCP 75. Was referred to legislature in August 2019, went through the committee process and then to JCRAR. JCRAR had issues with this rule and wanted us to remove some requirements regarding the restaurant grading and the license fee structure. We pulled the rule back and resubmitted the germane modifications on February 10, 2020. It is currently in the standing committees of each house, then it will go back to JCRAR for review.

Bureau of Laboratory Services Update Division of Management Services

Gil Kelley, Bureau Director of Laboratory Services (BLS) presented a lab update to the Board. The lab's mission is to provide defensible laboratory results in support of DATCP programs, and State and Federal regulations. BLS has been an accredited lab since 2008 and the services they provide is b: testing results to support the division's missions and supplying defensible data that

allows the divisions to act with confidence when results do not meet regulatory standards or indicate consumers' safety is at risk. Through division monitoring and enforcement, the testing results from BLS help provide consumers with confidence that they are getting foods and agriproducts that are safe and meet label claims. Also the testing results are often used in investigations of complaints and regulatory issues, to give clarity as to what did or did not happen or what needs to happen moving forward.

BLS mainly supports 2 divisions, the Division of Food and Recreational Safety (DFRS) and the Division of Agricultural Resource Management (DARM). They support DFRS by assisting with cleanliness standards and food testing. For example, products made within the State are tested based on risk profiles, DATCP policies and Federal mandates. Dairy products shipped interstate are tested for quality related standards. Meat and poultry ingredients, products, and environmental samples are tested for pathogens and chemical parameters which may indicate issues with food safety or label claims. They provide environmental surveillance samples of manufacturing facilities for bacteria that indicates food safety concerns, and support the Department of Health Services for testing related to outbreaks.

BLS supports DARM by analytical support in investigations of the misuse of agricultural chemicals (i.e. pesticides, fertilizers). They also support in the verification of the cleanup process in spill cases involving pesticides or fertilizers, verification of label guarantees for fertilizers and animal feeds, monitoring for agrichemicals in groundwater, and testing for Total Delta 9 THC in Hemp Samples.

Secretary's Office Report

Interim Secretary Randy Romanski presented the Secretary's report to the Board.

WASS: The consistency is actually very remarkable with how precise WASS' data is. WAAS is a trusted and accurate resource that provides valuable information and we encourage all producers to participate in surveys.

Census: The importance of making sure every person is counted in the 2020 census. The complete and accurate data affects decisions at many levels of government, such as funding, representation, etc. Anyone can respond to the census online, by phone, or through the mail, and it is all confidential.

Tribal Community Convention: Mr. Romanski was honored to attend the annual State of the Tribes Address in February which was given by Chairman Ned Daniels, Jr. of the Forest County Potawatomi Community. Mr. Daniels' message was one of partnership and collaboration to find meaningful solutions to our challenges. Mr. Romanski also sat down with the Great Lakes Inter-Tribal Council which touched on issues of food sovereignty, hemp, CWD, and boosting youth education programs. He looks forward to continuing to grow DATCP's relationship with the Tribal Nations.

NASDA Meeting: Assistant Deputy Secretary Angela James attended the NASDA meeting in D.C. NASDA gets its direction from the state and there were a lot of conversations on hemp and trade. Wisconsin is a leader with our hemp program and is one of the only states that have tested individual varieties of hemp.

Board Member Reports

Kurt Hallstrand: Timber harvesting is coming to a close for the winter and there is a mad rush to harvest because the markets are full. Also, the cattle industry is soft due to the unknowns.

Paul Palmby: There is uncertainty around MFP payments by this administration. With the Coronavirus they are starting to see large retailers shift to more days of supplies in their warehouse to accommodate pantry loading, once the virus passes there will be a slump on the other end.

Carla Washington: Pleasantly surprised to see Randy at the Legislative History Black Caucus at the Governor's mansion. Still participating on the TCP interview panel as the agency liaison, first round of 10 are completed, then 6 interviews to go.

Andy Diercks: Recently was also out in D.C. advocating on behalf of land grants, and currently is working on settling contracts. Andy is trying to achieve work life balance as well.

Greg Zwald: Recently attended the MOSES conference in LaCrosse which was about sustainability and organics. There were terrific speakers and people who attended the conference. Also, the Michael Fields Institute would be a great place to host a future board meeting. The dairy innovation hub has created new an opportunity and challenge. There has been nine research projects and professors stating that they need teaching time removed in order to do research. Greg sees a lot of enthusiasm because River Falls has been mostly a teaching university and professors are eager to do research.

Dan Smith: It is that time of year that we are spending a lot of time at annual meetings both in Wisconsin and Minnesota. It is interesting to see how the agenda is similar in Minnesota and Wisconsin, both have democratic governors, but Minnesota has a split legislature.

Patty Edelburg: The new president of the National Farmers Union is Rob LaRue and Patty was reelected as vice president.

Miranda Leis: Plant based goods are in high demand right now, but in a niche industry like organic, they are keeping an eye on this to see if it is a bubble and how it affects the dairy industry. The innovation in products is very important, we are always looking to improve color, texture or flavor. Organic Valley has been doing farm center referrals and are also looking at travel restrictions per coronavirus. Finally, the largest trade show in Anaheim has been cancelled due to the virus and rescheduling is to be determined.

**Election of Officers:
Board Chair, Vice Chair, Board Secretary**

Motion

A motion was made by Paul Palmby and seconded by Patty Edelburg to nominate Miranda Leis as Board Chair for the 2020 term. Motion was approved unanimously.

Motion

A motion was made by Andy Diercks to self-nominate as the Board Vice Chair for the 2020 term. Motion was approved unanimously.

Motion

A motion was made by Paul Palmby to self-nominate as the Board Secretary for the 2020 term. Motion was approved unanimously.

Future Agenda Items

Sara Walling, Division Administrator for the Division of Agricultural Resource Management would like to discuss drainage in 2020, hemp, and the 2020 annual report at a future Board meeting. Paul Palmby also requested PFAS as a future topic to make people aware of food packaging.

Adjournment

Motion

A motion to adjourn was made and seconded. Motion approved unanimously. The Board adjourned.

All reports and any associated documents presented during a Board meeting can be accessed by contacting the Office the Secretary, Legal Counsel at (608) 224-5029.