Minutes of the Milk Sanitation Board
March 5, 2009

The meeting was called to order by Chairman Robert J. Boggs in the auditorium of the Bromfield building at the Ohio Dept. of Agriculture. The following members were present:

W. Charles Ellis	Thomas J. Fleming
Rudy A. Hershberger	T. Chad Hollon
Steve Schmid	Tim Shipley
Rocky Volpp	Gene Phillips

Also attending were: Tom MacNish, USDA; Doug Soehnlen, Superior Dairy; Ivan Yoder and Stanley Mullet, Steiner Cheese; Ben Barner, Smith Dairy; Ron Geiser, DMS/DFA; Shawn Slotsve and Doug Blacksten, Kroger/ Tamarack; Carl Schroeder, National Farmers Org.; John Rhodes, Eastern Laboratory Services; Mike Depue, Broughton Foods; Mark Banner, Minerva Dairy; Frank Danalewich, OSU; David White, Ohio Farm Bureau; Stacey Wampler, H. Meyer Dairy; Tom McCombs, United Dairy; Jim Patterson, Ohio Attorney General's Office; and Tim Norris, Lewis Jones, Roger Tedrick, Brian Wise, David Mengel, Kevin French and Diane Schorr from the Ohio Dept. of Agriculture.

The Director asked for additions or corrections to the minutes of the MSB meeting that was held December 4, 2008. With no changes requested, a motion to approve the minutes was called for. Mr. Fleming made the motion to accept the minutes and Mr. Volpp seconded the motion. By a voice vote, the minutes were accepted.

Old Business

ODA Budget

The Director presented a brief update on the State budget. The Governor's budget for the next two years is currently in the General Assembly and hearings have been held. The director stated that never before in the history of the state has the revenue declined in consecutive years. It will take to FY 2011 before revenues return to the level they were in 2004. He stated that the decline in revenue is not entirely the fault of the economy but it is more the result of lower taxes. The net result is that the State of Ohio has collected $3.5 billion less per year because of the lowering of taxes. Even with an economic turnaround, it will take the budget a year to absorb the tax reductions. The general revenue funds of the Ohio Dept. of Agriculture's budget have been reduced by 20%. Because of an early retirement incentive last year that 23 employees took advantage of, the department had a savings of $1 million in operating costs. Thirteen of those employees will not be replaced. The department is offering an early retirement incentive again this year with 17 employees signing up so far. The Director stated that these early retirements come at a cost of losing talented and experienced employees. He assured those present that the department would keep its programs intact as best they can, given the current budget, but that it will be a struggle.

Dairy Division Budget

Chief Jones presented the proposed budget for the next biennium of 2010-2011 which will not be finalized until sometime in June. This budget will continue to fund the Dairy Division with 38% general revenue funds and 62% industry funds.

The early retirement incentive has resulted in one retirement last year from the Dairy Division and will possibly affect one more division employee this year. One of those employees will not be replaced. While the size of the division's farm staff is getting smaller, the state is not and still has to be covered with farm inspections. Chief Jones stated that the division currently is able to keep its expenses down. He stated that the division has saved $225,000.00 in payroll costs over the last three years due to retirements and one person resigning. Mr. Schmid asked if the $142,000 coming in monthly was covering the division's expenses and would there be a need to increase the fees from industry. Chief Jones replied that at the present time that amount was covering expenses, and there was no immediate need for an increase in fees. He is hopeful that the division can operate for another year on that amount.

New Business

Lab Contract Discussion

Chief Jones gave hand-outs to those present with the section of the revised code (917.031) describing the authority of the Milk Sanitation Board stating that the industry share of the division's cost of sampling and testing milk shall not exceed 63%. It included a chart of the Dairy Division budget history and another hand-out describing how other large dairy producing states handle the collection and the cost of testing milk samples.

Chief Jones gave a brief history of how the funding system was first established when the Grade A milk program was assigned to the Department of Health and the Manufacture Grade milk was still with the Department of Agriculture. It was decided at that time that the Grade A program would pay all of the inspection fees at a rate not to exceed 63% of the costs. He defined "laboratory expenses" as the sending of producer samples to a laboratory to be tested for somatic cell, bacteria, drug residue and temperature. At the present time there is only one independent laboratory, Eastern Laboratory Services. For that reason, the decision was made this year not to request bids on contracts for the laboratory business.

The discussion proceeded to what other states are doing regarding laboratory testing and how it is being paid for. Chief Jones stated that the ideal situation would be for the department to do the testing with their own people in their own laboratory, but that is cost prohibitive. He stated the purpose of this discussion was to get ideas from those present on what the department could do to reduce or eliminate the $205,000.00 annual laboratory fees paid by the Dairy Division. Most of these tests are already being performed for reasons other than Dairy's regulatory action, mainly for payment to producers. The Ohio Dept. of Agriculture's Dairy Division is requesting that this information be forwarded to the department to use. The current system, worked out between Eastern Laboratory and ODA's IT department, feeds the lab results directly into the

Dairy Division database. This is saving a lot of time and paper. The PMO (Pasteurized Milk Ordinance) has been adopted as the department's Grade A rule. It states that the samples must be tested and the results forwarded to the regulatory agency. There is nothing in the Manufacture Rules that states how those samples will be collected, analyzed and forwarded to ODA. The department is proposing a manufacture rule change to address this issue.

MSB member, Mr. Ellis, asked Mr. Jones for a clarification on his chart on sample collection and analysis comparison that did not agree with one that was provided several years ago. He pointed out that the current statistics don't show that the states of Indiana and Kentucky have no industry funding, while Michigan has 3% funding and New York has 1% industry funding. He continued by stating that in the state of Idaho there is 99% industry funding, Minnesota has 60% funding, Pennsylvania is 90% and Wisconsin is 55% industry funded. Ohio, with 60% of funding provided by industry, does not compare with the surrounding states where there is no charge to the state but where there is also very little industry funding.

Director Boggs stated that he had just returned from a NASDA meeting where almost all states dairy budgets were struggling and having to cut back on services. He reiterated the fact that the suggestions presented at the meeting were not necessarily what should be done. Given the fact that they know they will not receive anymore general revenue funds, the other alternative would be to go to the legislature and ask for an increase in funding by raising the 63% funding cap. The only way to increase operating funds is to consider lowering the costs of the laboratory fees. Since the Dairy Division is down to 8 farm inspectors, further savings cannot be found by layoff or early retirements. Chief Jones added that the division has been down to 8 sanitarians on the farm side for most of this year due to medical leave involving 3 sanitarians being off for extended periods of time. The five plant sanitarians have been extremely busy this year with all of the small farmstead cheese operations starting up. These operations are under all of the same rules for inspection as the larger cheese plants. The sanitarians on both sides have been busy trying to improve the number of Weigher, Sampler, Testers that are tested and evaluated.

Chief Jones asked for input on changing the system to the suggestions presented. Mr. Hollon asked if Pennsylvania still has industry doing the inspections on the farms. Chief Jones answered that Pennsylvania and some other states have certified industry inspectors. Ohio did not adopt that part of the PMO. The Pennsylvania Dept. of Agriculture still has to evaluate their inspectors. Chief Jones stated that he would prefer not going to this type of system. Currently, the farm sanitarians that live in central or northern Ohio are covering the 20 counties with 240 farms that Rodney Reynolds covered before he retired, with one or two overnight stays. Assistant Chief, Roger Tedrick made the statement that he had been on both industry and the state's side of the situation and he preferred the third party being there to do the regulatory work. He expressed his belief that the third party system now in place benefits industry and the consumers. Mr. Hollon agreed that it is a good system as long as it is affordable.

Director Boggs requested that the Board take the suggested rule changes piece by piece and asked if there were any objections to the word changes. Mr. Ellis asked if he was correct that these were changes to the manufacture rules only and was answered in the affirmative. Mr. Fleming asked Chief Jones if the PMO allows for the testing to be done and was told "yes".

Mr. Schmid asked for clarification on switching the current system of the state using one lab. to industry having the testing done. Chief Jones explained that it would be the responsibility of each plant or marketing organization to contract with a certified IMS lab. Mr. Ellis asked if the cost of each type of test is priced separately. He stated that most processors and marketing organizations are currently having additional testing done. Mr. Tedrick asked Mr. John Rhodes from Eastern Labs to explain their pricing. He stated that it is priced in segments, with each segment representing a group of farms. The number of farms and distance from their lab. determines the price for that segment. Mr. Rhodes added that their rates per segment are lower than what the surrounding states charge. ELS charges approximately $5.00 for bacteria, somatic cell and antibiotic combined, including the sample collection costs.

Mr. Ken Shuck of Brewster Cheese asked if there would be an adjustment to the percentage charged to industry if the state no longer pays for the laboratory costs. Chief Jones replied that at the present time there is no proposal to make an adjustment, but that the issue is up for discussion.

Mr. Ellis inquired about frequency of the drug residue testing in the manufacture rule, whereas bacteria and somatic cell must be tested four out of a six month period. Mr. Fleming replied that every load is being sampled and tested for drug residue. Mr. Tedrick added that any sample tested for bacteria without a drug residue screening is invalid. Mr. Ivan Yoder of Steiner Cheese suggested that the drug residue testing be limited to four out of six months as a cost saving measure.

Mr. Ellis stated that using Mr. Rhodes figures per cost of testing, he estimated the increase to Pearl Valley Cheese at 50% to do the testing themselves.

Chief Jones called on Tim Norris of ODA’s Legal Department to explain the timeline on a rule change. Mr. Norris stated that the rule change could be filed right away. After 31 days, they could have a hearing scheduled where there could be public comment. The public comments would be taken into consideration and then the changes would be submitted to the Joint Committee on Agency Rule Review (JCARR) for a hearing. Comments from that hearing would be taken into consideration. JCARR’s jurisdiction would end after 65 days and 10 days after that the rules would be effective. This process could be completed before the current contract with ELS ends on June 30, so the rule could take effect July 1, 2009.

Mr. Ellis asked if industry could expect a reduction in their share of payments to the state with the division saving $205,000 on yearly laboratory costs. Chief Jones replied that the $205,000 includes $77,900 of GRF money. Mr. Ellis asked how the industry monthly fees of $142,000 would be adjusted. Mr. Schmid stated that doing some quick math, he estimated the savings to the division to be approximately $6,000.00 per month. Mr. Ellis suggested the monthly fee be reduced to around $135,000 per month. Mr. Schmid suggested that the fees be left at the same level to make sure all costs of the program are covered.

Director Boggs pointed out that the purpose of the changes is to make sure that the program stays funded. They are certain that there will be no additional general revenue funds, and the department is hoping that they can hold on to what they have. The upcoming budget includes several one time sources of funds, and basically it is a house of cards. The question remains how to reduce costs or do whatever needs to be done to keep the program as it is. The Director stated that they would entertain any ideas that anyone present might have. Mr. Ellis asked if it was appropriate to suggest a reduction in the industry's assessment of $142,000 to some other number that would reflect that industry is now absorbing the cost of the testing. Director Boggs stated that could be considered. Discussion continued on how much the reduction should be. Mr. Ellis suggested lowering it to $135,000 per month.

Mr. Hollon made a motion that they go ahead with the change to the Manufacture Rules. Mr. Ellis stated that he was not comfortable with voting for the change without having a chance to read through the changes and discuss them with other processors. Mr. Volpp agreed with Mr. Ellis that there should be more time to review the changes. Mr. Ellis suggested that a draft of the language be sent to the processors and the manufacturer's group, and then at the next MSB meeting, they could come to some final agreement on the changes.

Director Boggs set the next meeting date as April 9 at 10 A.M. at the ODA campus for the MSB to come to a final agreement on the changes to the manufacture milk rules and the way the laboratory fees are paid. He also announced that the meeting following that one will be the State Fair meeting on August 6, 2009.

Public Comment Period

Director Boggs called for anyone wishing to be heard before the MSB to step forward. With no one coming forward to comment, the Director asked if there was anymore business to come before the Board.

Assistant Attorney General Mr. James Patterson updated the Boardon the suit in federal court regarding the labeling issue. He stated that the issue is actively being reviewed in the court, and that it is a matter of waiting until they hear from the court. The new rule won't go into effect until 90 days after the summary judgment.

Director Boggs called on Mr. David White of the Ohio Farm Bureau to discuss the activities of the Humane Society of the United States (HSUS). The Farm Bureau Federation agreed to meet with HSUS, at their request, on February 17, along with representatives of the Livestock Coalition, the Ohio Cattlemen's Association, the Poultry Association, Pork Producers and the Ohio Veterinary Association. The HSUS is looking at introducing legislation in the state to outlaw gestation crates for hogs, the use of veal crates and stalls and cages for laying hens. They would prefer this be done by way of legislation in 2009 but if they can not get legislation, they will seek a ballot initiative in 2010. Farm Bureau intends to meet with stakeholders later this month to develop and build a strategy. For those not familiar with HSUS's agenda, Mr. White explained that in 2002, the state of Florida adopted a constitutional amendment to outlaw gestational hog crates. From there they went to Arizona and did the same thing using a ballot initiative. Shortly after that, Smithfield, the largest pork producer in the United States, announced a ten year faze out of the use of gestation crates on their hog farms. California adopted a ballot initiative on veal crates, gestation crates, and by 2015 the initiative, will outlaw the use of cages for egg laying hens. Colorado was the first state to adopt legislation banning veal crates and gestation crates. Oregon has adopted legislation on gestation crates. Ohio is 10th in hog production with 4,000 hog farms, number two in egg production, 11th in dairy production and 3rd in veal production, so this is a very critical issue. He cautioned that the public should not confuse the HSUS with their local humane societies. They do not provide any funds to the local animal shelters. With a budget in excess of 130 million dollars and a political action committee with a farm agenda, HSUS is much more dangerous than PETA.

Chief Jones announced that the NCIMS conference will be the week after the next MSB meeting. The proposals for the conference will be out on the NCIMS web site. He encouraged those in attendance to look at the proposals, and if they have any questions or concerns on any of the proposals, to let him know, and they will take their concerns to the conference.

With no more comments or announcements, Director Boggs declared the meeting adjourned.