

Minutes of the Milk Sanitation Board
April 9, 2009

The meeting was called to order by the board chairman, Robert J. Boggs, in the Bromfield building at the Ohio Dept. of Agriculture. At the roll call, all members of the board were present.

Also attending were: Ken Fagan, dairy producer; John Rhodes, Eastern Laboratory Services; Frank Danalewich, OSU; Tom McCombs, United Dairy; Ron Geiser, DMS/DFA; Doug Soehnen, Superior Dairy; Kristin Mullins, MDFA; Gregg Elliot, Foremost Farms; Jim Patterson, Ohio Attorney General's Office; and Marvin Gutter, Bill Hopper, Lewis Jones, Roger Tedrick, Brian Wise, David Mengel and Diane Schorr from the Ohio Dept. of Agriculture.

The Director asked if there were any additions or corrections to the minutes of the MSB meeting held on March 5, 2009. With no corrections suggested, Mr. Fleming made a motion to accept the minutes as presented, with Mr. Volpp making a second to the motion. By a voice vote, the motion carried.

Update of Label Rule

Director Boggs called on Mr. James Patterson, Assistant Attorney General, to discuss the recent federal court decision regarding the milk labeling rules. Mr. Patterson related that Judge Graham has ruled in ODA's favor on most of the new labeling rules. The one question remaining in the judge's mind is the impact of the font requirements on the smallest dairy labels, such as on yogurt containers. The judge feels he needs to hear some testimony on all of the language being able to fit on the very small labels. On April 30 the parties will meet with the judge to discuss this issue. The only agreement ODA has made is to not enforce the rule until 90 days after the judge's final decision. In regard to every argument the judge has ruled on so far, he has determined there is no legal problem with the rule.

ODA Budget Update

Director Boggs noted that the state budget is before the General Assembly and still in the House. Due to all of the cuts and the school funding issue, it is expected that this budget will not go through the Legislature as smoothly as the last one.

The Director then introduced Mr. Marvin Gutter, Chief Financial Officer of ODA, and Mr. Mike Eckhardt who is assisting our current legislative liaison, Adam Ward. Chief Jones noted that Mr. Gutter was doing an excellent job and his assistance with the Dairy Division's budget was invaluable. It was also announced that ODA's previous Assistant Director, Doug O'Brien was appointed Chief of Staff for the number two person in the Agricultural Department in Washington D.C.

Lewis Jones, Chief of the Dairy Division, discussed the current division's budget that ends on June 30. He commented that for the first three quarters of this fiscal year, the division has used three quarters of its budget. He stated that at the next MSB meeting he will have the year end figures for this year's budget. Chief Jones stated that the division would not have been able to absorb all of the cuts it has were it not for all of the retirements that took place. The last person to retire was Mr. Rodney Reynolds who covered the farms in 20 counties of Southern Ohio. Since the decision was made not to fill his position until the beginning of the next fiscal year, other division farm sanitarians from all areas of the state have been covering his territory and getting the farms inspected on schedule.

Lab. Contract Discussion

As an extension of the laboratory contract discussion from the previous MSB meeting, Chief Jones stated that the way the milk samples are tested cannot be changed without a change to the milk rules of the Administrative Code. He handed out a copy of the proposed rule changes to those present. These changes would make it the responsibility of each dairy plant or co-operative association to collect and submit all individual producer milk samples to a laboratory for examination to determine the bacterial and somatic cell counts as well as be tested for beta lactam drug residue. In addition, each dairy plant or co-operative association shall have the testing results transmitted to the department as required by the director.

At the present time there is only one contract laboratory in the state; Eastern Laboratory Services. With the cooperation of Mr. John Rhodes of ELS, the lab results are entered into the division's database electronically from the lab.

Chief Jones asked if there were any questions regarding the proposed rule change. Mr. Ellis stated that he had forwarded the proposed rule to other dairy plants that he has contact with and would like to relate the concerns they had. The first question was on the section of the rule regarding the testing for bacteria and somatic cell in four months of a six month period. Currently that is being done on a monthly basis even though the rule states it only needs to be done four out of six months. Mr. Ellis questioned whether or not there would be a cost savings to both the industry and the division if it were done in four of six months instead of monthly. Chief Jones replied that if the testing was now going to be the responsibility of the plants or the co-operatives, the division would not object to their testing four out of six months. The second concern Mr. Ellis had for Chief Jones was regarding other drug residue tests and where the burden of costs for these additional tests would lie if the Director requested them. Chief Jones replied that he did not recall the Department ever requiring those additional tests. He went on to say that some Grade A plants currently do the additional testing at their cost and if they receive a positive result, they are required to report it to the Department. Assistant Chief, Roger Tedrick, mentioned that currently within FDA there are ongoing discussions on animal drugs and human interaction and the issue of humans fighting off super bugs. Right now

FDA is wrestling with the issue how it should be handled. Mr. Tedrick stated that when the issue comes to the state level down the road, ODA would like for all of the plants, including cheese plants, to be on board regarding additional drug testing. Chief Jones interjected that at the present time the additional testing is voluntary on the part of plants. Mr. Ellis went back to his original question regarding the obligation to industry to pay for any additional testing that the Director might request or will they be limited to what is currently required as stated in Appendix N? Mr. Tedrick replied that no one knows what will be coming down the road. He also stated that the producers have for years been held accountable for drug residue in the milk and they pay for the load as well as other costs having to do with the drugs in the load. Mr. Ellis stated that he thought the way the new rule reads, processors would be required to pay for any new tests that are added down the road and he was not sure that industry should agree to that at this time. Mr. Hopper, ODA Legal Department, stated that the word “additional” had been added to the new rule only for clarification and that the Director has always had the authority to ask for any testing as long as the current rule has been in effect. Mr. Ellis questioned Mr. Hopper further regarding who would pay for additional drug testing ordered by the Director. Mr. Hopper stated the if there was a public health problem and the Director requested further drug testing, in order for a plant to get back to processing and producing their product, they would have to provide proof to the Department that the public health issue had been eradicated. He went on to say that if such a scenario would happen, the cost burden would belong to the plant and not the Department, but this has always been the case. Chief Jones stated that he did not see in the foreseeable future any additional drug testing being required. Mr. Ellis brought to everyone’s attention the smaller cheese plants that are small in production but have a lot of producers and that these plants would find it difficult to pay for a lot of additional testing. Mr. Gene Phillips, Ohio Dept. of Health, stated that his interpretation of the new rule pertained to additional testing only being required somewhere down the road if a problem materialized and was not referring to on going testing. Chief Jones agreed that as stated in the new rule, “if a potential problem exists” refers to something happening to require additional testing and would not be something they would just one day decide to do. The Director asked if there were any further questions on the language in the new rule.

Director Boggs called on Chief Jones to discuss the differences, financially, if this rule is adopted as is. Mr. Jones referred to the current budget with the industry fund currently paying \$142,000.00 per month toward the division’s expenses. In referring to the proposed budget for the next fiscal year, he pointed out that federal stimulus money in the amount of \$63,423.00 per year has been added to the division’s budget. However, he stated that the division intends to operate as if that money is not there. The figures presented are the proposed budget for the next fiscal year, subject to legislative approval. The recommended budget reflects a reduction in costs to the industry due to the testing costs being switched from the state to industry with the passage of the new rule. Mr. Ellis calculated that the savings per month to the state would be \$17,000 but the reduction to industry would be \$7,000. He expressed his opinion that industry should receive the entire \$17,000 reduction. Assistant Chief Tedrick pointed out that the entire amount is not paid by industry, but that general revenue funds cover approximately half of that cost each month. Chief Jones pointed out that most of the plants are currently

already doing the required testing on the milk that comes into their plant, so any additional costs to industry should be minimal. Mr. Ellis stated that he was acting as a representative of small processors who buy their milk from many producers. He expressed the opinion that the extra cost of several hundred dollars a month to have the testing done will be burdensome for some of them. Mr. Ellis asked if a receiving station, under this statute, is considered a dairy plant. Mr. Tedrick replied that a receiving plant is licensed the same as a processor but in light of the current discussion, it is referring to the individual dairy plants or the marketing organizations representing the producers.

With no further discussion on the changing of the rule or the change to the budget concerning the allocation to processors for payment, Director Boggs called for separate motions for both issues. Mr. Fleming made the motion in support of the rule change, with Mr. Schmid making the second. In a roll call vote of the MSB members, all voted in the affirmative with the exception of Mr. Ellis who abstained. The proposed rule was adopted. The Director proceeded with a vote on the recommended FY 2010 budget reducing the industry share of the budget to \$135,000 per month commencing with July milk. Mr. Hollon made the motion to accept the recommended FY 2010 budget with Mr. Phillips making the second. In a roll call vote, all members of the MSB voted in the affirmative and the motion was adopted.

Plant, Hauler, WST Section Update

Director Boggs called on Mr. Dave Mengel for an update. Mr. Mengel related that some of the state's dairy plants were affected by recent recalls of peanut products. He made the suggestion that processing plants pay closer attention to their suppliers and find out what kind of recall plan they have in place. He also made note of the fact that all of the Weigher, Sampler, Testers and all Haulers are now listed on the ODA web site that anyone can access.

Farm Section Update

Director Boggs called on Mr. Brian Wise for a farm's update. Mr. Wise stated that even though milk prices have been depressed since the first of the year, Ohio is fortunate that it is retaining its numbers of dairy farms. He related that most of the division's farm sanitarians live north of interstate 70, yet they are working diligently to cover the 20 counties in southern Ohio that Rodney Reynolds inspected before he retired in January. They have been able to keep up with the required number of inspections. Once a new person is hired for the southern Ohio territory, the other sanitarians will be able to concentrate on their own section of the state. Mr. Wise also requested that the processors keep in touch with the Dairy Division with their selection of a laboratory when the new rule takes effect.

Public Comment Period

Director Boggs asked if anyone in attendance would like to address the Milk Sanitation Board. Mr. Frank Danalewicz of the OSU Food Industry Center announced that the Food

Industry Center is conducting a cleaning and sanitation workshop on April 28 & 29. He made brochures with the workshop information available to all in attendance.

There was no one else with any comments at this time.

Next Milk Sanitation Board Meeting Date

The next meeting of the MSB was set for 10 a.m. on Thursday, August 6 at the FFA building during the Ohio State Fair.

With no further comments, the Director asked for a motion to adjourn the meeting. Mr. Volpp made the motion to adjourn and Mr. Hollon seconded the motion.