

Minutes of the Milk Sanitation Board

August 10, 2006

In the absence of Chairman, Dr. Brisker, the meeting was called to order by Chief of the Dairy Division and Acting Chairman, Lewis Jones at 10:00 a.m. The meeting was held in the FFA Conference room in the Rhodes Building of the Ohio State Fairgrounds. The following Board Members were present at roll call:

Mr. Volpp	Mr. Hollon
Mr. Arbaugh	Mr. Ellis
Mr. Hershberber	Mr. Schmid
Mr. Fleming	

Mr. Larry Holbert, Ohio Department of Health Food Safety Division, attended in the absence of Gene Phillips as a non-voting representative of the State of Ohio Health Department.

Also attending the meeting were: Will Moore and Ron Geiser, Dairy Farmers of America; Tim Demland, Ohio Dairy Producers; Ken Fagan from Washington County, Fagan's Dairy; Warren Byle, Raw Milk Organization of Ohio; Charles Twining, Mick Heiby, William Hopper, Jim Patterson, Roger Tedrick and Diane Schorr of the Ohio Department of Agriculture.

Chief Jones announced that Dr. Brisker's absence was due to his Mother-in-law passing away. A sympathy card was passed around the room for those present to sign, if they so desired. He also announced that Dr. Brisker is retiring effective the end of September.

The next meeting of the Milk Sanitation Board will be after the upcoming State election in November.

Chief Jones stated that this was the week for the Brown Swiss, Jersey and Guernsey shows at the State Fair. This year is also the 50th anniversary of the Guernsey Futurity and that there are a larger than normal amount of Guernseys at the fair.

Mr. Volpp moved to accept the Minutes from the May 18, 2006 Milk Sanitation Board Meeting. Mr. Hollon seconded. Motion carried.

Old Business

PMO Adoption

Mr. Charles Twining updated the Board on the continuing effort of updating and adopting to the 2005 PMO. Mr. Twining pointed out the plant section of the PMO was sent out. He stated that progress is being made. Mr. Twining anticipates a meeting of the Grade A Standing Subcommittee to be held approximately the middle to late October. This keeps the process on track for adoption at the beginning of 2007.

Chief Jones announced that if any of the Board members wanted a hard copy of the 2005 PMO to let ODA know and it would be made available for them.

Raw Milk Update

Mr. Jim Patterson, Assistant Attorney General, gave the board an update on the Raw Milk situation. Since the last Board meeting, the Arlie Stutzman litigation involving the sale of raw milk has taken place. As a result of the administrative action, the hearing officer recommended the revocation of Mr. Stutzman's manufacture grade license. Subsequent to that, Mr. Stutzman applied for and was granted by the Ohio Dept. of Agriculture a Grade A producer's license. He is now in business as a Grade A producer.

At the end of the trial, the Judge took the evidence under advisement and made his decision. The Judge ruled that Mr. Stutzman's accepting a donation for his raw milk constituted a sale. He also concluded that there was no entrapment by the Ohio Dept. of Agriculture Enforcement Division. An injunction was issued instructing Mr. Stutzman to comply with all of the Ohio Dairy Laws.

While not a part of the Stutzman trial, the "herd share" agreements that he has with certain individuals were brought up. The court made it clear that he was not trying the "herd share" agreements. While the "herd share" agreements were not a part of this trial, the Department of Agriculture has made it clear that these agreements are not an acceptable way of circumventing the Raw Milk laws of Ohio. When the "herd share" agreements have to be addressed by the Ohio Dept. of Agriculture, it will be on a case by case basis. One other issue brought up during the Stutzman trial was whether or not a farmer can give away raw milk. The judge made several statements from the bench regarding this. While this issue was not a part of this trial, any time milk is put into any kind of container it must be labeled and if it is in a container, Federal and State regulations say it must be pasteurized.

House Bill 534

Mr. Patterson also updated the Board on House Bill 534 that would, under certain circumstances, allow the sale of Raw Milk in Ohio. Hearings were held in May before the House Agriculture Committee with proponent and opponent testimony. Director Dailey and Deputy Director, Dr. Brisker, from the Ohio Department of Agriculture gave testimony in opposition to HB 534. Dr. Brisker, as well as, representatives from the Ohio Department of Health, industry and other entities emphasized the health risks of drinking raw milk. At the conclusion of that hearing, no committee vote was taken on the bill. Due to the summer recess of the Legislature, the bill is still before the House Agriculture Committee. It is still in the very early stages of the process. From the House Agriculture Committee it would have to be sent to the House for vote. If passed there, it would then go to the Senate Agriculture committee, go through the same process of hearings, sent to the Senate for passage and eventually, to the Governor for signature.

Mr. Steve Schmid asked the question, if the bill remained in the committee stage, is it expected it would just die there?

Mr. Patterson replied that he couldn't speculate what the Legislature will do. If no action is taken on the bill during the current Legislative Session, the bill would have to start all over again next year.

Mr. Charles Ellis asked about the legality of producing and labeling of cheese and other manufactured products at the farm? Do they have to have the same oversight that traditional processor's do?

Mr. Tedrick said that the short answer is "yes". There are just a few requirements under the State of Ohio manufacture rules and then the Department defers to Duane Murray relative to USDA and FDA requirements and nutritional labeling.

Public Comment

Mr. Warren Byle spoke to the raw milk issue. He stated that while he respects the Department's position on the consumption of raw milk, the problem of consumption of raw milk is growing. Mr. Byle urged the Board to try to reach a compromise on the issue. It is his belief that there is a way to make raw milk consumption safe.

Chief Jones spoke to an article from the previous week in the USA Today newspaper. The article gave a review of each state as to whether or not the sale of raw milk is permitted. It stated that it is illegal to sell raw milk for human consumption in the State of Ohio. The article did, however, state that raw milk could be sold for pet food in Ohio and that herd share agreements are legal in Ohio. Both of these statements are untrue. You also cannot send raw milk into Ohio.

Mr. William Hopper addressed the issue of herd share agreements. While agreeing that herd share agreements would have to be addressed on a case by case basis, he felt it would be very difficult to craft an agreement that would permit the sale of raw milk in Ohio.

Mr. Ellis had questions regarding an individual's rights to share what they have produced or made on their own farm. Would they have difficulties regarding labeling issues?

Mr. Hopper responded that if you were making dairy products from raw milk and serving them to people in your own home, you would have a liability issue if someone became sick after eating those products.

Mr. Chad Hollon asked about products made using home pasteurization?

Mr. Tedrick responded regarding pasteurization. The PMO is very stringent in its regulations on pasteurization in the dairy industry. Most home pasteurization does not go to that length.

Mr. Ken Fagan, a Washington County producer, asked if he would be breaking the law by serving raw milk to guests in his home?

Chief Jones responded by stating that ODA cannot monitor what is served in people's homes, but there is a personal liability issue.

Laboratory Service Contracts

Mr. Charles Twining reported that the laboratory service contract process is complete with five laboratories participating. Those laboratories were Eastern Laboratory, Microbac, Michigan Milk Producers, Foremost and Prairie Farms. Michigan Milk Producers, Foremost and Prairie Farms will be doing their own testing. Microbac Labs. was awarded the bid and the contract for Superior and Tri County milk producers. Everything else will be done by ELS.

Mr. Hollon had a question regarding segments that were mentioned at the last meeting that did not receive any bids?

Mr. Twining replied that there is a "catch all" segment for producers that don't fit services within the other segments. Some of those segments will be moved over to the Ohio Dept. of Agriculture's Consumer Analytical Laboratory. The one segment of most concern that did not receive any bid was the goats. The ODA Laboratory does not have testing capability to do this testing. In negotiating with ELS, it was decided that the ODA staff will collect the samples and deliver them to ELS for testing. These are two year contracts, effective July 1, 2006.

Mr. Hollon asked about a statement made at the last meeting that the price of testing per segment was down?

Mr. Twining responded that in checking the average cost per test for bacteria, somatic cell and drug residue against what the bids for testing in 2003 were, the bids for 2006 were down. ODA was expecting a substantial increase in the cost because water and sediment were added to the tests. While the cost per test is down slightly, the cost of the contract will increase.

Mr. Hollon asked about the exact cost per sample?

Mr. Twining stated that bacteria is somewhere around \$2.50, somatic cell is somewhere under \$2.00 and drug residue is about \$1.10. During the bidding process, the laboratories are given an estimated number of producers in a given segment. The numbers can change as producers change marketing organizations, producers go out of business and new producers are added. Even after the bidding process, you won't know the exact yearly cost because these numbers do not include the number of retests during the year. The laboratory does charge for each retest.

Mr. Schmid asked about the percentage of retests that need to be done?

Mr. Twining responded that he believed it was around 22%. If a producer has two out of four samples exceeding the standards, a retest is mandatory.

New Business

NASDA (National Association of State Departments of Agriculture)

Chief Jones reported on the NASDA national meeting that he had attended. He announced that Ohio will host the next NASDA national meeting in mid July of 2007 at the Holiday Inn in Worthington.

The two key issues of interest discussed at this year's meeting were as follows:

Raw Milk and "herd share" agreements - A resolution was adopted and sent on to the mother organization of NASDA stating that "herd share" is not recognized as a legal sale of raw milk.

Organic certification process and the length of time it takes some producers to get certified as "Organic". A resolution was adopted asking the USDA to closer monitor the third party organizations that certify the organic producers. If the public wants organic milk, they should be confident that is what they are getting. ODA has no jurisdiction over this certification.

Budget

Copies of the Dairy Division expenditures were passed out to those in attendance. Chief Jones pointed out that by statute 917.02 it states, " the Director of Agriculture may do any of the following: #7 Annually, not later than 90 days after the end of the State fiscal year, determine the expense of administering and enforcing this chapter and rules adopted under it during the preceding state fiscal year and report the determinations to the Milk Sanitation Board". Under statute 917.031 it states, "the Milk Sanitation Board, after reviewing the Director's annual report, *shall* prescribe inspection fees for milk processors and *may* prescribe inspection fees for milk producers and milk haulers". ODA is now receiving some of the fees from processors, some from receiving stations and some from haulers.

Chief Jones pointed out the differences between the expenditures for FY 2005 and FY 2006. He stated that by the end of the fiscal year, the division had run out of GRF money and that fiscal year '06 expenditures were up about \$80,000.00. The division is saving some money by not filling a clerical position that became empty the end of May and is, instead, using a summer intern for data entry 20 hours per week. Chief Jones also mentioned that the Division has three employees who will possibly be retiring by the end of this fiscal year. He anticipates replacing all three employees with replacements that will be hired at a lower per hour rate which should result in savings to the Division of \$63,000.00 per year.

One increase in expenditure to the Division this year has been the increase in gasoline costs for those employees who travel. The Division does not control its utility costs. Those expenses are controlled at the Director's level or by the Fiscal Division. Each division of ODA pays their share of the utilities. Last year all of Dairy Division's utility costs were paid from fund 4R2. Chief Jones stated that the expenditures that the Division can control they are trying to control as best they can.

Chief Jones pointed out that in 1999, Industry paid 60.4% of the cost. He stated that Industry had worked very hard to get increased funding from the General Assembly in the 2000-2001 budget, resulting in Industry's share of the costs those next two years around 40%. Since that time, GRF money has decreased each year. Consequently, Industry's share of costs has risen to almost 53%. Projections for the next two years look to be around 55% and 63% respectively.

Chief Jones proposed that with the August receipts, Industry's fees be raised to \$130,000.00 from the current \$109,000.00.

Chief Jones told the Board that he has been instructed by the Administration to look at all possible revenue sources. With that said, he mentioned the idea of yearly licensing fees for producers but that would take a change in the law.

Chief Jones pointed out that when he took over the Dairy Division in 1999, there were six Plant Inspectors with five today; there were three Survey Officers, today there are two; there were twelve and one-half Farm Inspectors, today we have nine; there were six and one-half clerical staff, today there are two and one-half. Everything is being done to keep operations under budget.

Chief Jones then asked for a motion from a Board member to increase Industry fees.

Mr. Ellis expressed his opposition to any fee increase to Industry. He noted, that even though the number of farms has decreased in the past six years, program costs have not decreased. He questioned whether or not the State of Ohio has the same food safety concerns since they have reduced general revenues during that same six year period.

Mr. Ellis pointed out that farm prices are down, cheese prices are depressed, taxes are up, fuel costs are up, along with wages and benefits. He stated for Industry fees to go up 30% is unacceptable.

Mr. Demland commented that he is against farmers paying for this increase. He questioned if an effort could be made to convince the lawmakers that the benefactors of a strong food safety program need to pay for it? (i.e. the citizens of Ohio) Mr. Demland then asked if it was possible for the producers that are the cause of the repeat inspections and sampling to incur most of that cost?

Chief Jones answered that there would need to be a Statute change. He stated that there is not sufficient time to change the fee structure for the next budget, but it is something that could be looked at for 2008 – 2009.

Mr. Ellis asked if there was a timetable to come up with a solution to this funding issue? He stated that he thought other options should be explored.

Chief Jones explained that the expenses of the Dairy Division, as it relates to the 4R2 fund, will be \$130,000.00 a month. Presently, the Dairy Division is collecting \$109,000.00. Consequently, the Division is falling behind by \$21,000.00 each month. In ten months, the Division will be at a zero balance.

Mr. Schmid commented that he also dislikes fee increases, but he also wants a healthy inspection system providing oversight. He pointed out that the state to the west of us has had many challenges, including the ability to even perform inspections. This has jeopardized their Grade A standing and ability to market milk across state lines. Mr. Schmid stated that he appreciated the fact that his firm has not had that problem in Ohio.

Mr. Schmid stated his belief that the Division needed to be kept funded for the short term. Alternatives such as reducing costs or coming up with a new fee structure could then be explored.

Chief Jones stated that there are only a few ways to reduce costs. One of those might be to reduce the number of water inspections on farms from every two years to every three years. He went on to say, that because of past cost cutting, the Division is behind in Hauler, Weigher, Sampler, Tester inspections. He also stated that there are many functions that the Division does for the USDA and does not get reimbursed.

Mr. Hollon asked if everyone is paying at the same rate?

Mr. Twining replied that rates are the same with the exception of Grade A shippers relative to Manufactured Grade shippers. Manufactured Grade pays one-half of the Grade A rate.

Mr. Ellis stated that the original thought on the fee structure was that, since there are fewer Manufactured Grade shippers, the majority of the costs to the Dairy Division would be inspections of Grade A producers. He went on to say that it now appears that the Department is spending an inordinate amount of time and effort on re-inspections of the Manufactured shippers.

Mr. Ellis requested that the Milk Production and Manufacturing Standing Subcommittee be convened to discuss the situation involving the number of Manufactured Producers and the costs to the Division associated with this segment. If a strategy could be put in place to address bacteria, somatic cell counts and re-inspections, this cost to the Division would be reduced.

Mr. Hershberger agreed, stating that if he and other farmers can produce milk that meets those standards, other producers should also be able to meet the same standards. He expressed the opinion that some of the younger producers should be instructed regarding cleanliness with the outcome being lower counts.

Mr. Ellis asked for the Department to look into what would need to happen to allow industry to conduct their own inspections.

Mr. Patterson replied that for a Manufacturer's inspection program to take place there would have to be a change in the State laws regarding inspections.

It was agreed that the Manufactured Milk Standing Subcommittee would convene in the near future to address the funding impact of the Manufacturing segment.

Mr. Ellis requested that the Division hold off on any increases in fees until after the end of the year.

Mr. Fleming stated that if the Board puts the issue off until then, the problem will only get worse.

Chief Jones asked for a motion from one of the Board members to modify the Milk Inspection Fee Schedule to increase the monthly apportioned amount from \$109,000 to \$130,000 per month beginning with the August 2006 invoice; with the August 2006 invoice amount due October 20, 2006.

Mr. Schmid moved the apportioned amount increase in the Milk Inspection Fee Schedule to \$130,000 until the Manufactured Milk Standing Subcommittee has chance to look at and change the fee structure.

Mr. Volpp seconded the motion.

Chief Jones asked for a voice vote. The motion carried.

The next meeting of the Milk Sanitation Board will be held November 9, 2006.

Mr. Hollon moved to adjourn the meeting, with Mr. Volpp seconding the motion. The motion carried.

Approved _____ Attested _____

Date _____ Date _____

