Minutes of the Milk Sanitation Board

November 9, 2006

Chairman Paul Panico called the meeting to order at 10:00 a.m. The meeting was held at the Ohio Department of Agriculture, Bromfield Building.

Chief Lewis Jones stated that Tim Shipley, a Grade A producer, was selected to replace Dale Arbaugh on the Milk Sanitation Board. The appointment was necessary as Mr. Arbaugh was no longer a milk producer and therefore could not legally be a Board member. Because of the short notice Mr. Shipley was not able to attend this meeting.

Mr. Panico told the Board this meeting would be the first and last meeting he would be Chairing.

The following Board members were present at roll call:

Mr. Charles Ellis	Mr. Thomas Fleming
Mr. Rudy Hershberger	Mr. Chad Hollon
Mr. Steve Schmid	Mr. Rocky Volpp
Mr. Gene Phillips	

Mr. Ellis moved to accept the Minutes from the August 10, 2006 Milk Sanitation Board Meeting. Mr. Volpp seconded. Motion carried.

Also attending the meeting were: Will Moore and Ron Geiser, Dairy Farmers of America; Tim Demland, Ohio Dairy Producers; Ken Fagan, dairyman, Washington County; Warren Byle, Raw Milk Organization of Ohio; Ralph Schlatter, dairyman, Paulding County; Dave White, Ohio Farm Bureau; David G. Cox, Lane, Alton & Horst, LLC; Ted Strouth, State of Ohio Heath Department; Lewis Jones, Diane Schorr, Charles Twining, Mick Heiby, and William Hopper, Ohio Department of Agriculture.

Mr. Heiby recognized Mr. Ellis's son, Kurt, for winning the National Award in Agricultural Processing at the National FFA Convention held in Indianapolis, Indiana.

Old Business

PMO Adoption

Mr. Twining gave a brief update concerning the progress of adopting the PMO. Mr. Brown has one more section of comparisons to send out to the Grade A Standing Subcommittee for their review and then a meeting will be scheduled somewhere around the 1st of December. Hopefully only one meeting will be needed and then that recommendation will be brought to the Milk Sanitation Board for approval.

New Business

Manufacture Milk Production Standing Subcommittee

Mr. Ellis brought to the Board's attention a handout entitled Reinspection Fee Recommendation. Mr. Ellis pointed out the Manufacture Subcommittee met twice, once in September and once in October. The subcommittee's recommendation is to impose a reinstatement fee on producers who have been through a license or registration suspension. Before they can be reinstated, the fee will be assessed to the milk plant or marketing agency.

Mr. Ellis gave the Board some background to this by addressing the concern that 20% of the producers are requiring 80% of the attention of the field staff and resources relative to reinspection. The Manufacturing Milk Standing Subcommittee wanted to address this and determine if there was anything they could do to alleviate this problem. Mr. Ellis said they focused on putting some teeth into the process of losing your license and then being reinstated. Mr. Ellis said that many things were talked about, one of which was a reinspection fee. As an example, if a producer did not pass the yearly manufacture grade inspection, then a reinspection fee could be assessed in order to retain licensure. There was no support for this particular idea.

Mr. Ellis went on to say, producers can be shut off due to facility sanitation violations or for violating quality standards. The enforcement grid clearly details the procedure regarding a producer's license suspension. Producers are first warned before steps are taken to shut off a producer. Mr. Ellis explained that on the Grade A side, if a producer is suspended from Grade A, they will still have an option of shipping to a manufacture market. Manufacture producers who are suspended do not have that option and so they lose their market. There is a schedule relative to how long a producer is to be shut off. Mr. Ellis stated the subcommittee felt there is a small segment of manufacture producers that are repeatedly getting their license suspended, even after going through the license suspension and reinstatement process. That small segment of manufacture producers is the target group for this reinstatement fee.

Mr. Ellis presented to the Board the Manufacture Subcommittee's recommendation that an administrative rule change be implemented that would impose a $50.00 producer reinstatement fee on any milk producer's first occurrence; a $100.00 reinstatement fee should be imposed on a producer's second occurrence within a twelve (12) month period; and a $150.00 producer reinstatement fee on a producer's third occurrence within a twelve (12) month period. This would apply to any Grade A or Manufacture Grade milk producer for any license or registration reinstatement. The fees shall be assessed by the Dairy Division to the Marketing Organization or Milk Plant. The intention would be that the Marketing Organization or Milk Plant would then submit the fees, in response to the invoice from the Dairy Division. It would then be up to that Marketing Organization or Milk Plant to collect from the farm by means determined by that organization or milk plant. It could be in the form of a deduction or a physical check.

Mr. Ellis concluded his presentation on the committee's recommendation and requested discussion. He stated that the Board has the option of amending or rejecting this recommendation.

Mr. Schmid asked if the Dairy Division would get the money before the producer was reinstated.

Mr. Ellis replied that he thought they should.

Mr. Schmid stated he thought that if the producer wants to get reinstated, the Dairy Division should have the money before reinstatement. That would give it some urgency.

Mr.Fleming asked Mr. Jones if he knew what kind of dollars this recommendation would generate within a twelve month period.

Mr. Jones replied that it would not generate enough to solve the Dairy Division budget challenges. He stated that the intent of this recommendation is not to generate revenue but to bring more producers in line with industry standards and reduce repeat offenders.

Mr. Hollon asked whether or not the recommendation would include suspension for drug residue.

Mr. Ellis stated that it would include any reason for suspending a producer's license.

Mr. Fleming asked, as a matter of clarification, if a Grade A producer has his license suspended for a two or three day period and is shipping milk Manufacture Grade during that period, will the reinstatement fee apply in order for that producer to get his Grade A license reinstated?

Mr. Ellis answered in the affirmative.

Mr. Ellis asked Mr. Schmid about the fee collection. It was mentioned that the fee could be a deduction from a producer's milk check from the manufacturer but there was a question concerning collecting from a Grade A producer's milk check through the market administrator.

Mr. Hollon stated that other payments, such as hauling, are taken out.

Mr.Fleming stated that he didn't see deducting the fees a problem but that it would not get the money to the Department very quickly. If the money has to be to the Department before a producer can be reinstated, there could be a delay before that milk is back on the market.

Mr. Ellis stated that it was discussed that the milk hauler could physically collect a check from the producer before the milk could be pumped onto the truck.

Mr. Schmid suggested that the inspector collect the check when he reinspects.

Mr. Ellis stated that the inspector would not necessarily have to be on the farm if a producer was suspended for somatic cell count. If he received a good count, he can begin shipping milk again.

Mr. Schmid emphasized his belief that the fee should be collected before a producer is reinstated, giving the issue some urgency.

Mr. Ellis said it was discussed that the Dairy Division could add the reinstatement fees each month to the inspection fees of the processors that they invoice. He added that the processors could in turn bill the marketing administrator and they could somehow collect it from the farmer.

Mr. Jones stated that the Dairy Division does not want to put the responsibility of collecting the fees onto the sanitarians.

Mr. Ellis restated the purpose of the reinstatement fees is directed to those producers that are repeat, year after year, multiple suspension which are using a disproportionate amount of resources.

Mr. Hollon expressed concern that if the fees are collected by deduction from a producer's milk check two to six weeks after the offense, the farmer is not going to feel the impact of the suspension like they would if they have to pay the fees before being reinstated.

Mr. Fleming stated that it was his understanding that the worst offenders were the smaller producers that would notice the deduction of the fees pretty quickly.

Mr. Charles Twining pointed out to the Board that the dairy law specifies that the Milk Sanitation Board <u>may</u> assess fees to the producers and <u>shall</u> assess fees to the milk processors and milk haulers. He went on to say that, under the law, there could be a problem if the Board was talking about charging a fee to any of the milk marketing organizations. Mr. Twining stated that as the Board is responsible for setting the fees assessed each year, they should set forth the parameters of how these new fees will be assessed.

Mr. Fleming suggested that the Grade A Subcommittee review this new rule before the Board adopts it.

Mr. Hollon suggested that the reinstatement fee only apply to those circumstances where a farm needs reinspection. If the farm can be reinstated without a reinspection, the fee should not apply.

Mr. Ellis pointed out that it takes some time to put a license suspension in place. A producer has already received two warning letters and has had three violations over a five month period before they are suspended. There is a similar process and time period for processors.

Mr. Fleming suggested that the first notification of a reinstatement fee should go out with the first warning letter.

Mr. Ellis asked if the Board could vote on the recommendation of a reinspection fee and then leave it up to the Dairy Division as to how the process would take place.

Mr. Panico asked the question whether this was something that the Grade A Subcommittee and the Manufacturer Subcommittee should look at together and bring their recommendations back to the Board?

Mr. Schmid asked what would be gained by having the subcommittees look at the issue.

Mr. Ellis stated that he was willing to differ until the next Board meeting, but that he felt strongly that this reinstatement fee should happen, on both the Grade A side and the Manufacture side.

Mr. Fleming stated that he has no problem accessing the fees to the repeat offenders but that the details should be worked out with the Dairy Division on how it will affect their time and cost to implement.

It is Mr. Schmid's belief that the recommendation will not increase the cost to the Dairy Division but that it will decrease the number of repeat offenders.

Mr. Ellis mentioned that the Subcommittee had discussed more cost effective ways of sending out the warning letters. The current process has duplicate letters going to both the producer and the milk plant.

Mr. Schmid stated that he had no problem with the recommendation but he feels the reinstatement fee should be double what the committee is recommending.

Mr. Hollon asked Mr. Heiby, the Farm Section Unit Head for the Dairy Division what inspections are carried out for a producer's reinstatement?

Mr. Heiby replied that for a Grade A bacteria suspension an inspection by the sanitarian is necessary. A Manufacturer Grade producer just needs a good bacterial count before they are reinstated. He noted that a lot of the drug residue suspensions are after the fact; the milk was rejected or tested on routine sample with the milk already through the system and the penalty is assessed at a later date with no retesting done.

Mr. Hollon thought the fee should be limited to the suspensions that require the inspector to come back to the farm.

Mr. Ellis believed that would not get at the issue relative to manufactured producers. Most of the problems revolve around bacteria counts during the summer months. Mr. Ellis went on to say that these producers can produce milk with low counts even during the summer months.

Mr. Fleming voiced his concern that antibiotics are a bigger problem than bacteria. A lot of things can spike your bacteria count but to have antibiotics in your milk is carelessness or just not paying attention. Mr. Fleming said that he would like the Department to tell the group how they would be able to handle this before we would tell them we wanted them to implement this fee. In other words how would they be able to administer this program without creating a lot of extra expense to the Department? Is there another way?

Mr. Twining mentioned that he felt he could not charge a DFA or NFO because he does not have authority under law. So it comes out as a direct producer fee. Mr. Twining said that it might be easiest to have the producer pay at the time he submits his reinstatement application. If you want to go down the road of charging the marketing organization then it becomes an internal calculation each month to determine the fee each organization needs to pay. Mr. Twining said this would be complicated and involved. He went on to say that our database was not set up to determine readily a producer's first, second or third license suspension.

Mr. Schmid said that it seems that you like the reinstatement fee be paid before bringing that producer back on the market?

Mr. Twining responded that of the two scenarios, that is the most palatable.

Mr. Hollon favored taking the drug residue violation out of the proposed fee structure. He mentioned the fact that they take a pretty big hit as it is. Not getting paid, paying for the load, etc.

Mr. Fleming mentioned that you do not get a first, second, or third warning letter. Automatically that producer is suspended for the violation.

Mr. Ellis said that maybe it should be enforced on the second antibiotic violation not the first.

Mr. Hollon insisted that the drug violation is a different animal, stiff penalties are already in place and we should exclude it from this particular fee discussion.

Mr. Ellis asked if we excluded it, would that address Mr. Hollon's concern?

Mr. Volpp thought it might help the administration of this fee also.

Mr. Hopper suggested convening a group of representatives from the Grade A Subcommittee and the Manufacture Subcommittee to fully discuss this proposed fee.

This would help envelop all stakeholder's thoughts and give due diligence to whether or not law and rule changes need to be made.

Mr. Volpp expressed his opinion that the dollar amount for reinstatement is on the light side.

Mr. Hollon moved to convene a combined meeting of the Grade A Subcommittee and the Manufactured Subcommittee to address the issue of a reinstatement fee for producers.

Mr. Volpp seconded the motion.

Mr. Fleming commented that maybe just 2 or 3 from each committee would suffice instead of all of them. This should happen after the ODA staff has had an opportunity to develop some thoughts on implementation. This meeting should also be held in Mr. Ellis's area where the bulk of the effected producers reside.

Chief Jones agreed that each committee Chairman should select a like number to attend this meeting.

Mr. Ellis capsulated the mission of this group as one of addressing reinstatements, antibiotics included, amount that the fee should be, and the administration of the fee.

Motion passed by voice vote.

Dairy Division Budget

Chief Jones told the Board that the industry fund balance is just above $200,000. The Division is doing a number of things to keep that balance up. At the beginning of the fiscal year, Chief Jones instructed our Administrative Assistant, Diane Schorr, and other administrative staff, who write checks to charge 75% of our operating expenses to GRF. The rest or 25% is charged to the 4R2 industry fund. Chief Jones said that this should put the division on target for the 45-55 split between the two funds. There is around $55,000 in the 4R2 fund for equipment (cars). We need to buy cars but being so late in the year it may fall upon the incoming administration to make the final decision.

Milk Sanitation Board Terms and Pay Rates

Chief Jones told the Board that one topic he cannot remember discussing is the Board Member's hourly pay rate.

Before that, Chief Jones explained about the timing of Tim Shipley's appointment to the Board replacing Dale Arbaugh. Mr. Shipley knew of his appointment only three days before this meeting.

Chief Jones also pointed out the fact that Rudy Hershberger and Steve Schmid's terms are up at the end of this year. Letters will be prepared and sent requesting nominations.

Before January of this year, Mr. Hershberger, Mr. Fleming, and Mr. Ellis were making $18.43 per hour. Mr. Fleming and Mr. Ellis were reappointed this past year and is the first opportunity for a pay increase for them. They were compensated at $18.43/hr. and with the 3% increase for state workers it is now $18.98. Mr. Schmid, Mr. Volpp, and Mr. Hollon were already making that. As of right now, if Mr. Hershberger if reappointed, he will be bumped up to the $18.98 rate. At that time everyone will be at the same rate.

Organic and rbST Discussion

Chief Jones led off by saying there is increased activity concerning organically produced milk in our state. Along with that there is some movement relative to rbST free milk production. Some marketing organizations have called asking what ODA's position is on this subject and what regulatory actions would be brought to this effort?

Chief Jones told the Board that the Dairy Division will be asking for organic certificates to be sent to Mick Heiby at the Division office. This will help us know every certified organic producer in the state. Then at the time of our inspection, if anything seems grossly out of the realm of an organic farm, we will follow up with the organic certification organization.

Chief Jones also said the rbST issue will be handled the same way. In lieu of a certificate we want an affidavit stipulating the non-use of rbST. One marketing organization has told us they are working on giving the department access to their electronic listing of rbST free producers. Chief Jones said a letter went out to the marketing organizations stating these actions that need to be performed in order for us to put some structure and meaning into these two nomenclatures.

Mr. Ellis asked if there would be any enforcement action for anyone who would be in clear violation of organic or rbST protocol?

Chief Jones answered that there would be no action at this time.

Mr. Schmid said that the enforcement is on the processors. If the processor finds a producer not living up to the organic standards, the processor does not want to pay organic prices for that milk.

Mr. Cox explained the role of the USDA and the Ohio Ecological Food and Farm Association (OEFFA) relative to enforcing the national organic farm production program.

Public Comment

Mr. Warren Byle of the Raw Milk Organization spoke of the raw milk sales issue which is of great concern by many people in Ohio.

Mr. Byle also spoke of recent legislation regarding herd shares and raw milk sales. He spoke of H.B. 534 and emergency bill H.B. 650.

Mr. Byle stated he is concerned about the direction ODA is taking on the raw milk issue in that ODA is not being conducive to legalizing raw milk sales. Mr. Byle asked the Board to review the issue and try to recommend a way to make raw milk sales legal.

Mr. Tim Demland of the Ohio Dairy Producers pointed out that all of the organizations that he represents and a vast majority of industry across the country are strongly opposed to the sale of raw milk.

Mr. Demland stated they are looking at alternative means of removing or reducing bacterial loads in milk without going through the traditional pasteurization process.

Mr. Ellis asked Mr. Byle if he could send the Board some examples of rules passed in those states that allow raw milk sales.

Mr. Byle agreed to do this. He went on to clarify that each state has their own approach to raw milk and rules will differ in those instances. Mr. Byle said he would send them all.

Mr. Ellis said that instead of swamping the Board with paper, maybe just send the examples that mirror what the Ohio raw milk group would like to see in our state.

Mr. Byle then went on to make examples of Pennsylvania and California. These two states do allow raw milk to be sold in stores which H.B. 534 does not allow, so maybe a program like the state of Washington is more apropos.

Mr. Ralph Schlatter, a milk producer, said that the raw milk issue is not going away. Mr. Schlatter said that raw milk sales is something that this Board needs to address because it is not going away. M Schlatter believes that if the raw milk sales go underground, that is where health problems will start.

Mr. David Cox, or Lane, Alton & Horst LLC, stated he is the lawyer for the raw milk producers that ODA has targeted. Mr. Cox believes current law does not prohibit the sale of raw milk by everybody.

Mr. Cox stated the way to assure a safe supply of raw milk is not through pasteurization, pressure treatment or ultra filtration, it is through proper husbandry.

Mr. Cox asked if there is a problem with ODA having to go out and reinspect the bad actors, why doesn't ODA revoke their license instead of just suspending them?

Mr. Schlatter asked for clarification. In 2001 when I met with the Dairy Division and discussed the raw milk issue, I was told this raw milk prohibition was passed October 31, 1965. But now I am finding out that this bill was not passed until 1997. Now the Department tells us that we just grandfathered in back to 1965. Can that legally be done when you grandfather something in? Mr. Schlatter stated that when you grandfather in something it is from that date forward. Mr. Schlatter said that he is not sure you can go back 30 years and grandfather something in.

Mr. Demland said that he talked with Mr. Shipley and he is very willing to serve on the Board, but prior to being notified he had agreed to host the Ohio State Dairy Challenge so students are at his farm today.

The Board did not take any action on these public comments.

Chairman Panico asked for a date for the next Milk Sanitation Board meeting. It was agreed that the next meeting would be Thursday, February 8, 2007 at the Department.

Mr. Hollon moved to adjourn. Mr. Hershberger seconded. Motion carried.

Approved_____ Attested_____

Date _____ Date _____