

Minutes of the Milk Sanitation Board  
December 2, 2010

The meeting of the Milk Sanitation Board was called to order at 10:00 A.M. on December 2, 2010 in the Bromfield Building of the Ohio Dept. of Agriculture by Mr. Robert Boggs, Director of ODA. The following board members were present at roll call:

Mr. William Ellis	Mr. Chad Hollon
Mr. William Riley	Mr. Tim Shipley
Mr. Rocky Volpp	

Mr. Larry Holbert represented Mr. Gene Phillips on behalf of the Ohio Dept. of Health. Also in attendance were: Frank Danalewich, OSU/FIC; Ken Fagan, dairy producer; Ron Geiser, DFA; Bill McNutt, Ohio State Milk Hauler's Assoc.; Jim Patterson, Ohio Attorney General's Office and Bill Hopper, Lewis Jones, Roger Tedrick, David Mengel, Brian Wise and Diane Schorr of the Ohio Dept. of Agriculture.

This being the last meeting Mr. Boggs would be attending as director, he thanked the Milk Sanitation Board for their personal efforts and contributions to dairy policy as members of the MSB. He reported that the dairy industry in Ohio would produce 5,000,000 pounds of milk for the second year in a row. The last time this was accomplished was in the 1960s with over 270,000 more cows than are in the state now. He remarked that it was regrettable that the rest of the troubled economy didn't work as efficiently as the dairy industry.

#### **Approval of Minutes of the Last Meeting**

Director Boggs asked if there were any changes that needed to be made to the minutes of the meeting held in August. With no corrections needed, Mr. Riley moved the minutes be accepted with Mr. Shipley making the seconding motion.

#### **Budget Report**

Chief Jones stated that expenditures of the Dairy Division were right on target with what was budgeted for use this year in GRF and the industry fund was showing a small surplus. He informed the board that dairy had recently purchased some needed equipment for the Plant inspectors. He concluded by saying that the inspectors on both the farm and plant side were still doing their jobs very efficiently across the entire state. The Director stated that the Dairy Division is in much better shape across the board than some other divisions.

#### **Ohio Livestock Care Standards Board**

Director Boggs in his capacity as Chairman of the Livestock Care Standards Board gave a report of their progress. He stated that the work of the board is more difficult and consuming much more time than he ever anticipated. The board meets every other week and between the meetings, sub-committees representing each facet of agriculture have been meeting. The work on the euthanasia standard and the civil penalty standards has been completed. The board is in the midst of working

on the veal, swine and poultry standards. The Director turned the discussion over to Roger Tedrick to inform the board of the beginnings of the Dairy subcommittee. Mr. Tedrick related that the subcommittee contains different representatives of the industry, including veterinarians. The main issues under discussion now are tail docking, castration and dehorning. He stated that it is interesting to see the differing opinions as it relates to these three issues. The issues to be decided are when the best time is to do these procedures and the correct anesthesia to use. He stated that most of the veterinarian information coming out is against tail docking. Mr. Tedrick stated that the discussions were eye opening and it was interesting to hear the differing opinions, much as there has been on the veal discussions. Mr. Ron Geiser of DFA asked if any progress was made regarding stalls versus crib housing, adding that the decisions made for the veal calves would filter down to the dairy farmer and their treatment of calves. Director Boggs corrected him, stating that every commodity would be treated on its own merit. He informed all of those present that they could at any time go to the department's web site and find the latest information on the Livestock Care Standard's Board.

### **Labeling Update**

Director Boggs called on Mr. Jim Patterson of the Attorney General's Office to give an update on the milk labeling law. Mr. Patterson reported that in September, the sixth court of appeal upheld most of the provisions of the rule with the exception of two specific provisions that they found to be too restrictive. The first part they found too restrictive was on the rule's prohibition on milk composition claims relating to the use of hormones and the content of pesticides and antibiotics in milk. The court picked up on one of the opposition claims that there is a statistical correlation between the use of rBst and increased insulin growth factor in the milk. Based on this, the court said that they couldn't say that there was absolutely no difference in the composition of the milk, even though FDA has said there is no significant difference in the milk from cows given rBst. In regards to the issue of the prohibition of substances that are not allowed in any milk, antibiotics and pesticides, the court ruled that prohibition is appropriate and that it was misleading to advertise that milk did not contain these substances since no milk that is sold contains them but that the judge should have a hearing on it to give the plaintiff an opportunity to present evidence. If that should happen, there would be no problem proving that no milk contains these substances. The appeals court upheld the label disclaimer rule with regard to font, size and color. The one provision that the court held was too restrictive was the rule that the disclaimer be contiguous with the claim. The sixth circuit court of appeals has sent the case back to Judge Graham, the trial judge, with instructions for him to finalize the case with these last few issues that need to be decided. As it stands now, Mr. Patterson expects that there won't be a conference with Judge Graham on the issue until late February, giving the new administration time to review what has taken place previously and to make a decision on how the department is going to proceed long term on the rule. Mr. Shipley stated that he was disappointed in the appellate court's ruling on the composition of milk due to the fact that there is no test available to test milk for the presence of rBst. Director Boggs commented that he found it ironic that the court of appeals found that it was important that the font, color and size of the disclaimer should be the same as the claim but that it didn't matter if it was located where it could be read. Mr. Hollon asked how states surrounding Ohio are handling this issue. Mr. Patterson stated that the sixth court of appeals includes all of the states in the Great Lake's area, including Ohio, Pennsylvania, Michigan and Tennessee. The director summed up the

issue by stating that it is not just an issue limited to rBst but also claims regarding production that might be misleading to the public.

### **Request for Milk Sanitation Board Nominations**

Roger Tedrick, Assistant Director, explained to those present that nomination letters had gone out to members of the industry seeking nominations for the Milk Sanitation Board members whose terms were expiring at the end of 2010. Those members are Mr. Volpp, Mr. Hollon and Mr. Shipley.

### **Public Comment Period**

At the hour of 10:30, as called for in the agenda, Director Boggs asked all those present if there was anyone who would like to speak before the board. No one indicated that they would like to make any comments to the board.

### **Possibility of Financial Disclosure for Board Members**

Mr. William Hopper of the ODA legal department was called upon to explain to the board that they may be called upon by the Ohio Ethics Commission to submit financial disclosure forms. This is in part due to the fact that the MSB members are compensated above and beyond the expenses they incur to attend the meetings. Mr. Riley stated that he had already received a certified letter stating that he needed to submit his disclosure form by December 10, 2010. Mr. Ellis asked if the financial disclosure forms apply only to boards that receive compensation above their normal expenses and if so, would they still need to fill out the forms if this board decided not to receive compensation above and beyond their expenses. Director Boggs stated it was at the discretion of the Ethics Commission to decide which boards needed to file financial disclosures and it was not based on whether or not that board received compensation. Mr. Ellis stated that he thought the board should look at whether or not they should just be reimbursed for their expenses and not receive compensation above and beyond those expenses. Mr. Patterson added that changing the compensation of the MSB would require a change in statute. Mr. Hopper stated that he will follow up with the ethics commission and keep the board informed of their decision.

### **Farm Section**

Brian Wise, Farm Section Head, brought the board up to date on what was happening on the farm side. He related that Mr. Chuck Sharpe who worked in the farm territory in the Northeast corner of the state, retired at the end of October. That territory was then taken over by Mr. Jim Black who has been employed by ODA in the Meat Inspection Division. Mr. Wise related that there are at the present time 3,242 total farms in the state. That is a net loss for the year of 53 total farms, however, there are several 1,500 to 2,000 cow farms that are close to starting back up. He reported that since the last board meeting where they had reported the problem with can farmers using peroxide in their milk, they had tested seven can receiving stations. They only had 4 total farms that tested positive at the lab, one of which was from Ohio and he was suspended immediately. They discovered that those samples that are presumptive positive need to be taken to the lab in a more timely manner for the peroxide to still be present. By Spring, they hope to have the kinks

worked out on the testing manner and will try again. Mr. Tedrick spoke up that the week of testing got the word out that Ohio is looking for peroxide and those producers that are trying to beat the system. Mr. Ellis asked if Brian could supply him with the name of the test strips they used and the company they purchased them from in case any of the plants would like to use them for testing incoming milk.

### **Plant Section Update**

Mr. David Mengel gave a report on the processing plants. He mentioned that the small on farm processors are growing rapidly. There soon will be a sheep milk farm in the state that will be processing sheep milk cheese. He told of a meeting he attended on sheep farming and milking where there were 100 attendees. Many of those interested in making sheep milk cheese have interest from high end restaurants to purchase their cheese.

The plant inspectors recently received some new circulating equipment for testing pasteurizers. In addition, new salt boxes were ordered for the plant inspectors. This new equipment will replace some that is more than 20 years old.

Mr. Mengel told those present about a raw milk pathogen study that he had participated in for FDA. Ohio, along with 31 other states, participated in this study that is now completed after 2 years. A full report on their findings will be released later this year.

### **Further Business**

Mr. Hollon related that Mr. Jack Kiser had phoned him to complain about the number of tests that he is required to run at his reload station as mandated by FDA and the IMS requirements. Mr. Tedrick addressed his concerns by stating that FDA does not want to take any steps backward concerning food safety.

It was reported that the next IMS conference will be held in April in Baltimore, Maryland.

Mr. Ellis requested that they go back to the discussion of the plant section and address the types of products that are being made at the farmstead plants. He asked Mr. Mengel if some of the products being made at the farms are Grade A products and was told that there are. Mr. Mengel reported that there are currently 120 plants statewide being inspected by 5 inspectors. He stated that if the farmstead plants continue to grow at a rapid rate, he wasn't sure they would be able to keep up with the required inspections. Mr. Tedrick stated that they are now taking steps to have one inspector, either from the farm side or the plant side, inspect both the farm and the processing operation at these farmstead plants. Mr. Ellis cautioned against letting one inspector carry bacteria from the farm side into a plant area where the products are being made.

Mr. Jones called to the board's attention that he will be retiring in January and that this will be his last meeting as the Chief of the Dairy Division. He thanked the board for their service and they in turn thanked him.

### **Set Next Milk Sanitation Board Meeting Date**

The date of the next Milk Sanitation Board meeting will be set for after the proposals for the IMS conference come out which will probably be the end of February.

### **Adjourn**

Mr. Chad Hollon made the motion to adjourn the meeting and Mr. Tim Shipley seconded the motion.