

COMMONWEALTH OF PENNSYLVANIA
Pennsylvania Milk Marketing Board

MINUTES

SUNSHINE MEETING

February 4, 2019
1:00 P.M. – Room 309 – Ag Building
Harrisburg, PA

1. CALL OF MEETING TO ORDER/ROLL CALL:

Chairman Robert Barley called the regular Sunshine Meeting of the Pennsylvania Milk Marketing Board to order at 1:00 P.M. in Room 309 of the Agriculture Building in Harrisburg, PA. Chairman Barley opened the meeting with the Pledge of Allegiance followed by a moment of reflection.

Secretary Tim Moyer called the roll. Those in attendance and constituting a quorum were:

Board Members:

Present: Chairman Robert Barley, Consumer Member Carol Hardbarger, Member James Van Blarcom

Absent: None

Others Present: Doug Eberly, Esq., Andrew Saylor, Esq., Steven Zalman (PMMB), Gary Gojsovich (PMMB), Allen Warshaw, Esq. (PFMA), Earl Fink (PAMD), John Pierce (PAMD), Marvin Beshore, Esq. (PADC), Wendy Yovienne, Esq. (PAMD), Greg Hostetter, Dep Sec (PDA), Jay Howes (PADC), Chuck Turner (Turner Dairy)

2. ACCEPTANCE OF MINUTES:

A. Acceptance of Minutes of the January 2, 2019 Sunshine Meeting.

PRESENTED by: Chairman Barley

MOTION by: Consumer Member Hardbarger

Moved to accept the minutes as attached of the January 2, 2019 Sunshine Meeting. (*Note:* Minutes were prepared and distributed to the Board members for their review prior to the February 4, 2019 Sunshine Meeting). **Seconded by Member Van Blarcom. Motion carried without dissent.**

Assenting: Chairman Barley, Consumer Member Hardbarger, Member Van Blarcom

Dissenting: None

3. PUBLIC INPUT (PERTAINING TO GENERAL ISSUES:

DISCUSSION: Mr. Turner from Turner Dairy informed the Board of the passing of Edward Schneider, he was a competitor who helped build the dairy industry in western PA.

4. OLD BUSINESS:

Chairman Barley commented on the amendment to 7 Pa Code 143.31 referencing the 90-day Notice. The Board is taking comments through Friday, February 8th, and will take comments into consideration in preparing the proposed regulations. All parties involved will be informed.

Attorney Yovienne stated that the due date for comments was noted prior as Monday, February 4th. Chief Counsel Eberly confirmed that all comments are due through Friday, February 8th, instead.

5. NEW BUSINESS:

1. Request date/time change for the March Sunshine meeting.

PRESENTED by: Chairman Barley

DISCUSSION: Chairman Barley proposed changing the March meeting from Wednesday, March 6, to Friday, March 8th, at 12:30 PM and immediately followed by the Over-Order Premium hearing.

MOTION by: Member Van Blarcom

Moved to accept the change to the March Sunshine meeting as stated. **Seconded by Consumer Member Hardbarger. Motion carried without dissent.**

Assenting: Chairman Barley, Consumer Member Hardbarger, Member Van Blarcom

Dissenting: None

2. Amendment to 7 Pa Code chapter 150 Milk Marketing Fees.

PRESENTED by: Secretary Moyer

DISCUSSION: Secretary Moyer stated that the last fee increase was in January 2004, and with the loss of controlled sales the Board is looking at all the fees that generate funds for the agency. Steve Zalman has developed a template for the analysis of the revenue structure.

MOTION by: Consumer Member Hardbarger

Moved that the Board review 7 Pa Code chapter 150 Milk Marketing Fees, for the purpose of assessing our revenue structure and proposing amendments. **Seconded by Member Van Blarcom. Motion carried without dissent.**

Assenting: Chairman Barley, Consumer Member Hardbarger, Member Van Blarcom

Dissenting: None

3. Petition for Transparency and Accountability with the PMMB Over-Order Premium.

PRESENTED by: Chairman Barley

DISCUSSION: Chairman Barley stated that there was a petition submitted to the Board by State Representative John Lawrence, for Transparency and Accountability with the Over-Order Premium. This was presented at the Lebanon Listening Session and the Board is taking it under consideration.

Attorney Beshore commented that PADC is not taking any position on the matter but noted that the issue of transparency it is not always a simple or direct one. Within any organization there are many ways it can be represented. There are different dynamics within the different parts of the state and how the

information is communicated. There is statutory language giving coops the prerogative to allocate funds amongst its members, which is not be constrained.

Attorney Yovienne had no comment on the matter at this time since it was something being looked at for the first time.

MOTION by: Consumer Member Hardbarger

Moved that we investigate the statutory issues surrounding this Petition for Transparency and Accountability. **Seconded by Member Van Blarcom.**

Consumer Member Hardbarger amended her motion to state, that the Board will investigate the statutory and regulatory issues and potential changes. **Seconded by Member Van Blarcom.**

Consumer Member Hardbarger stated further that though her tenure on the Board has been short, her effort is to always be as fair and open in listening to all sides of every issue and weighing those within her best judgment of what is presented, and what is law and our regulations. And she commented that this item warrants being looked at within that framework.

Assenting: Chairman Barley, Consumer Member Hardbarger, Member Van Blarcom

Dissenting: None

4. Pennsylvania-New York weigher/sampler reciprocity agreement.

PRESENTED by: Chairman Barley

DISCUSSION: Chairman Barley presented the reciprocity agreement in which Pennsylvania and New York will accept each other's weigher/sampler certifications. One does not have to be certified by both states.

MOTION by: Member Van Blarcom

Moved to accept the Pennsylvania-New York reciprocity agreement. **Seconded by Consumer Member Hardbarger. Motion carried without dissent.**

Assenting: Chairman Barley, Consumer Member Hardbarger, Member Van Blarcom

Dissenting: None

Chief Counsel Eberly asked the Board to go back to New Business items #2) Amendment to 7 Pa Code Chapter 150 Milk Marketing Fees, and #3) Petition for Transparency and Accountability with the PMMB Over-Order Premium, and delegate to Mr. Moyer to follow through on those items.

Chairman Barley asked for a motion to authorize Mr. Moyer to proceed and follow through with the New business items #2 and # 3 as stated and approved.

MOTION: Member Van Blarcom

Moved to authorize Mr. Moyer to begin the process and follow through as needed for the Amendment to 7 Pa Code chapter 150 Milk Marketing Fees, and the Petition for Transparency and Accountability with the PMMB Over-Order Premium. **Seconded by Consumer Member Hardbarger. Motion carried without dissent.**

Assenting: Chairman Barley, Consumer Member Hardbarger, Member Van Blarcom

Dissenting: None

6. REPORT OF CHIEF COUNSEL:

PRESENTED by: Attorney Eberly

DISCUSSION: Attorney Eberly stated that the Board met on January 29th for an executive session for a personnel issue. No deliberations nor official actions were taken. He stated that the Board and Mr. Moyer met earlier today and spoke to Tim Drake, the Executive Director with the Maine Milk Commission., just to become versed on how the Commission operates. No deliberations nor official actions were taken.

He further stated that they also met today with someone from India, there are some similarities with the province or state where he lived in his home country of India. There is not enough production to meet their demand, he was looking to explore ways to export milk to India.

Following today's meeting there will be an all staff meeting in which Chief Counsel Eberly is presenting on ex parte communications.

7. LEGAL CASE DISPOSITIONS

1. Shenk's Foods, Inc. Late Dealer monthly reports

PRESENTED by: Attorney Saylor

DISCUSSION: Attorney Saylor presented **1. Legal Docket CA-18-016 for Shenk's Foods, Inc.** for late dealer monthly reports. A consent order was signed and a penalty of \$200.00 was paid.

MOTION by: Member Van Blarcom

Moved to accept the consent order as presented. (**1. Legal Docket CA-18-016 for Shenk's Foods, Inc.) Seconded by Consumer Member Hardbarger. Motion carried without dissent.**

Assenting: Chairman Barley, Consumer Member Hardbarger, Member Van Blarcom

Dissenting: None

2. Dean Dairy Holdings LLC Late payments to Producers

PRESENTED by: Attorney Saylor

DISCUSSION: Attorney Saylor presented **1. Legal Docket CA-18-024 for Dean Dairy Holdings LLC** for late payments to Producers. A consent order was signed and a penalty of \$500.00 was paid.

MOTION by: Consumer Member Hardbarger

Moved to accept the consent order as presented. (**1. Legal Docket CA-18-024 for Dean Dairy Holdings LLC) Seconded by Member Van Blarcom. Motion carried without dissent.**

Assenting: Chairman Barley, Consumer Member Hardbarger, Member Van Blarcom

Dissenting: None

8. LICENSE APPLICATIONS:

- 1. Enhanced Community Organics Cooperative Dealer
D/B/A Lancaster ECO

PRESENTED by: Attorney Saylor

DISCUSSION: Attorney Saylor presented that Enhanced Community Organics Cooperative D/B/A as Lancaster ECO, has submitted an application for a dealer license for 2018-2019. Applicant is a cooperative arranging to have its own milk processed into drinkable yogurt. Applicant has provided a sworn certification from Applicant and the processor that the charge for processing is not less than the processor’s cost, that the applicant is providing only its own milk for processing, that the milk is not being sold to the processor, that the processor provides the finished product to Applicant, and that the processor and Applicant are not buying or selling or exchanging milk or any controlled products in any transactions with each other (or with any related entity). Applicant intends to sell drinkable yogurt to stores in Areas, 1, 2, 3, and 4. Appropriate staff has reviewed the application to ensure that all forms have been received and are in order, and that the applicant has met the requirements of the Milk Marketing Law. With Board approval of this application, a dealer license will be issued.

MOTION by: Member Van Blarcom

Moved to approve a dealer license to Enhanced Community Organics Cooperative D/B/A Lancaster ECO as presented. **Seconded by Consumer Member Hardbarger. Motion carried without dissent.**

Assenting: Chairman Barley, Consumer Member Hardbarger, Member Van Blarcom
Dissenting: None

9. REMINDERS:

PRESENTED by: Chairman Barley

<u>MEETING (s)</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Regular Sunshine Meeting	Mar. 6, 2019	1:00 P.M.	202 Ag Bldg.

Chairman Barley stated that the next Sunshine meeting has been approved and moved to Fri. Mar. 8 at 12:30 PM in room 309 Ag Bldg.

<u>HEARING (s)</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
Over-Order Premium for All Six Areas	Mar. 8, 2019	12:30 P.M.	309 Ag Bldg
Area 5 Cost Replacement	Mar. 11, 2019	10:00 AM	309 Ag Bldg
Area 6 Cost Replacement	Mar. 11, 2019	10:30 AM	309 Ag Bldg

10. ADJOURNMENT:

Chairman Barley, hearing no further matters to come before the Board, adjourned the meeting at 1:23 P.M.