

# Local Food Advisory Committee Meeting Notes for May 22, 2015

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## Present at meeting:

Wayne Martin, U of MN Extension  
Megan O'Hara, Homegrown Minneapolis  
Michele Schermann, U of MN  
Colleen Paulus, citizen  
Kathy Zeman, Minnesota Farmers Market Association  
Lisa Wetzel, MN Dept. of Agriculture  
Jennifer Stepes, MN Dept. of Agriculture  
Jerry Smith, MN Dept. of Health  
Jane Jewett, MN Institute for Sustainable Agriculture  
Emily Walz, DVM, MPH student, U of MN  
Donald Warneke, SNAP-Ed, U of MN Extension  
Ben Miller, MN Dept. of Agriculture  
Katherine Simon, MN Dept. of Agriculture  
Sarah Leach, MN Dept. of Health  
Mike Lilja, Sustainable Farming Association  
Tim Jenkins, MN Dept. of Health  
Marianne Sussman, Cottage Food Law advocate  
Shelly Erickson, Cottage Food Law advocate  
David Nicholson, MN Dept. of Health  
April Bogard, Open Arms of MN  
Valerie Gamble, MN Dept. of Agriculture

## Present by phone:

Brett Olson, Renewing the Countryside  
Paul Hugunin, MN Dept. of Agriculture  
Marilyn Johnson, MN Fruit & Veg Growers Assn  
Bruce Miller, MN Farmers Union

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## Approved Water Source for Food Service and Food Manufacturing

*Jerry Smith, Ben Miller, Katherine Simon*

MDA and MDH have been working on a Memorandum of Agreement on approved source of water. There were inconsistencies between retail food licensing and the MDH Food, Pools and Lodging requirements.

Minnesota Statute (M.S.) chapter 175 states that MDH is the approving authority for water supply for facilities licensed by MDA. That chapter references Minnesota Rules 4626.0980, the rule for well construction.

- If the well met construction standards at the time of its construction, has maintained the required isolation distances, and is not a public water supply; then it can be an approved source of water for food service and food manufacturing.
- If the well is to be a public water supply, it must also be brought up to current well construction standards.

### **A public water supply is either a community or a non-community water supply.**

- A community public water supply is one of the following:
  - A municipal water supply
  - A water supply that has 15 service connections to permanent structures
  - A water supply that serves a minimum of 25 people on a minimum of 60 days per year, permanent population (e.g. a school)
- A non-community public water supply is one of the following:
  - A water supply that has 15 service connections (e.g. a campground)
  - A water supply that serves a minimum of 25 people on a minimum of 60 days per year, transient population (e.g. rural restaurant or church)

### **Businesses that are smaller than the threshold of serving 25 people on 60 days per year**

Example: A Bed & Breakfast that would never have 25 people there at one time. The water used in this B & B is not a public water supply, but the B & B is a public-use licensed facility with an approved water supply. The approved water supply can be the property's private well, if it meets the required construction standards and isolation distances.

- Isolation distances must be measured, because use of areas near a well can change over time. For instance, livestock holding areas might have been moved closer to the well head than the allowed distance.
- In the absence of construction information, a well cannot be used as an approved source of water.
- Water testing cannot substitute for the construction record.

- Inspection probably cannot substitute for construction records, either. Inspection could show whether the interior of the pipe is sound, but won't be able to determine thickness and depth of the grouting. The grouting ensures that the pipe does not corrode and contaminants from the surrounding soil cannot enter the well.
  - An existing well could be retrofitted with grout to the proper depth, if there's enough space around the pipe to allow a 2" ring of grout. However, many well bore-holes are not large enough in diameter for that.
  - MDH estimates the lifetime of a well at 50 to 60 years. If the well age is getting close to that, installing a new well up to current public water supply standards might be the most cost-effective option.
- If a business starts small, below the threshold for a public water supply, it can use a well that was constructed to standards that were in place at the time of that well's construction, provided the construction records are available.
- If the business grows past the threshold, and the well is constructed to older standards, it will have to be brought up to current public water supply standards in order to become a public water supply.

### **Well construction standards have changed over time.**

- The federal Safe Drinking Water Act was passed in 1974, and well construction standards became law at that point. Some contractors were already constructing wells to recommended standards before that date.
- The older standard for public water supplies called for grout around the pipe to a depth of 20' to 30'. In 2009, the standard changed and full-depth grouting is now required for all public water supplies.
- Private wells still do not require full-depth grouting.

### **Permitting vs. Licensing vs. Exempt for farms and food businesses**

- MDA inspects Grade A dairies that are permitted, not licensed – these dairies use the private water source on the farm.
- MDA inspects rural meat processors. These are licensed businesses and require an approved source of water.
- Products produced under the "Pickle Bill" are exempt from licensing and therefore the water source is not evaluated.
  - If the product is adulterated with some water-borne contaminant, that is a violation of the Food Code.
  - Once a business moves out the exemption and becomes licensed, the water used must be from an approved source.

### **How should individuals and businesses get information about their well?**

- Well construction records from 1974 onward are in the County Well Index, which is now available online:  
<http://www.health.state.mn.us/divs/eh/cwi/>

- For a well constructed prior to 1974, the farm may have a paper construction record in its older files.
- Farms and well-drilling businesses are often handed down through generations. If you know who the well contractor was and they're still in business, they may have the record on file for a pre-1974 well.

## **Minnesota Statute and Rule relevant to water supply:**

M.S. 31.175

Minnesota Rule 4626.0980

Minnesota Rule 4720

Minnesota Rule 4725

## **Questions and Discussion:**

Migrant housing used to be a separate category of housing with different standards for water supply. That category was eliminated in 2000.

The MDH Food, Pools, and Lodging fact sheet on Special Event Food Stands specifies that the water must be a public water supply. That is inaccurate according to the information provided by Jerry Smith during this meeting, and the wording of that fact sheet needs to be changed.

- Noted that the approval process for use of a private well for a food facility can take a long time, while Special Event Food Licenses normally take 14 days to be issued. If a Special Event Food Stand operator wants to use a private well as the water source, they need to plan on much longer than the 14 days for the approval process.

## **Minnesota Department of Agriculture Legislative Update**

*Jennifer Stephes, Ben Miller*

Funding requests are made from a program standpoint, but in the end, the MDA, DNR, and MPCA budget requests were all rolled into one bill. A key point made was that MDA needs to have adequate staff available to handle issues that may arise. Avian flu is a case in point. MDA will be adding about 20 positions, and 10 to 12 of those will be inspector positions.

- MDA requested \$2.7 to 2.8 million to hire adequate food inspections staff to do timely inspections and to deal with delegated authorities, canning facilities, and new businesses.

- Interest in a licensing liaison position to help individuals and businesses navigate the licensing system
- Considering changing the departmental structure, dividing the Dairy and Food Inspection Division
- There was a fiscal note on the cottage food bill; about \$50,000 in annual fees was estimated as income but this will be less because of the two-tier system: cottage food businesses with <\$5,000 in annual sales will not pay an annual fee.
- The meat inspections program got less money than the food inspections program. It does more targeted types of inspections.
  - About \$250,000 was allocated for meat inspections. This is most of what was requested.
  - With the 50% matching funds from the USDA, this will allow hiring of 5 new positions.
  - This puts the meat inspections program in a good position of being able to add staff and keep up education efforts.
  - They are working now on contacting meat processors and developing a strategic plan for where in the state to place inspectors.
  - Minnesota requires inspection of non-amenable species of animals, but is not reimbursed 50% by USDA for that, so MDA has to be careful about budgeting for those inspections.
- Dairy inspections wanted to maintain their staff and succeeded at that. There was an increase in the percentage fee per hundredweight (cwt) of milk for inspections.
  - Number of dairy farms in the state has declined, but volume of milk produced has remained stable, so charging by cwt helps to maintain the inspections budget.
- Feed inspections is partially financed by a \$0.16/ton fee.
  - FSMA (Food Safety Modernization Act) includes preventive controls for animal feed
  - Vertically integrated companies – that produce their own feed for their own livestock – are exempt.
  - Inspection of feed facilities is analogous to Good Manufacturing Practices (GMPs) inspections for food manufacturers.
  - Labeling is a big part of feed inspections.
  - Tissue residue testing is done to check for presence of BSE (Bovine Spongiform Encephalopathy).
  - Microbial testing is not done. Microbials are not considered adulterants in animal feeds.
- Pet food labeling and licensing law changed. Pet items sold in a bag or container of less than 10 lbs. needs to go through a specific label review process.
  - Question about whether a baked pet treat could fall under the exemption in M.S. 28A.15 Subd. 9 (which will be changed to the cottage food law if that passes.)
  - Microbial pathogens are considered adulterants in pet foods.
- Embargo authority for the MDA has been expanded to allow embargo of a facility and the equipment within a facility, in addition to the previous authority to embargo the food products. This is in M.S. 34A.11.

- For example, in the case of avian influenza, the MDA could now embargo movement of food products from a plant within a quarantine area.

## Cottage Food Law

*Kathy Zeman*

This is part of the same omnibus bill that includes the MDA budget. Minnesota Farmers Market Association got involved to ensure that baked goods could still be sold at farmers' markets; an early draft of language would have shut that down.

Most cottage food laws nationwide only deal with baked goods. In Minnesota, we already had the Pickle Bill and so canned goods were added into the Cottage Food bill. The bill has a two-tier system:

- Persons selling < \$5,000 per year of food items under this exemption do not pay an annual registration fee and complete an online food safety training module.
- Persons selling \$5,000 to \$18,000 per year of food items under this exemption pay a \$50 annual fee, and have a more intensive food safety training requirement.

This is supplemental income; it's not enough for a full living and thus helps limit activities under this bill to the small-scale and part-time operators.

Emily Walz wrote a policy brief about the cottage food law. This is posted on the website of the U of MN Food Policy Research Center:

<https://www.foodpolicy.umn.edu/sites/foodpolicy.umn.edu/files/cottage-food-production.pdf>

## Training and Enforcement:

- Suzanne Driessen in U of MN Extension is going to create the training curriculum. MFMA will help deliver it. Good food safety training is MFMA's priority in order to avoid illness outbreaks from foods sold under this exemption.
  - The training program needs to be approved by the Commissioner of Agriculture
  - English as a Second Language instruction in the provisions of this bill will be important for the immigrant community. Tim Jenkins suggests ECHO TV
- A requirement for liability insurance was suggested during the legislative process. Having insurance is a recommended best practice, but is not required under any MDA or MDH license category. Farmers' markets or city governments may require it. Insurance requirements were not part of the final bill.
- Enforcement authority is available under M.S. 34A if needed to deal with an illness outbreak or other problem with a food item produced under this exemption.

## Non-Standard Recipes

- Joellen Fiertag can spend a day doing recipe testing of some of the currently untested recipes that people are using for jam, jelly, salsa, etc.
- Katie Lampi with the City of Minneapolis is catching some non-standard recipes at farmers' markets in the city.
  - Example: Chess pie – the vendor wanted a variance from a requirement for mechanical refrigeration. The recipe was tested and met standards for a non-potentially hazardous food item.

## Standard List of Non-Potentially Hazardous Foods

Kathy Zeman circulated a draft list of non-potentially hazardous food items.

- MDA staff need to review this. The list included some clearly not-allowed items like jerky.
- Ultimately the goal is to have an online, searchable list that would be updated on a regular schedule.
- The length of the list is increased by the need to include the name of every ethnic variant of a kind of cookie, roll, flatbread, etc.
- Non-potentially hazardous food is something that doesn't meet the definition of a potentially hazardous food. FDA defines "potentially hazardous" foods.

## Fact Sheets for Farmers Market Vendors

*Kathy Zeman*

Kathy Zeman circulated a list of potential topics for fact sheets. Her goal is to produce a series of these that would explain to farmers how to market various specific kinds of products: meat, poultry, eggs, fresh fruits and vegetables, mushrooms, dairy products, etc.

The MFMA has a grant to develop these; they need to be completed by November 1.

A question came up re: herbal tinctures. If alcohol is used, then that comes under the authority of the Department of Public Safety. The vendor may need to get a city or municipality license for sale of alcohol. There is potential for overlap of DPS and MDA definitions and regulations with these types of products.

- Brett Olson noted that there's also a distinction between distilling alcohol for fuel vs. for human consumption.

## Bush Foundation Community Innovation Grant

*Jane Jewett*

MISA has received official notice of the award. Helene Murray and Jane Jewett from MISA and Jan Joannides from Renewing the Countryside attended the Bush Foundation Convening in early May. The

next step is to begin assembling the advisory committee and start the process of hiring the two part-time positions.

Nikki Neeser and Ben Miller will need to discuss who should be involved from the MDA.

Suggested advisory committee members:

- Tim Jenkins (MDH)
- Sarah Leach (MDH)
- MFMA representative
- SFA representative – Chris Kudrna
- City of Minneapolis – Katie Lampi or Dan Huff
- Olmsted County as a delegated authority
- Latino Economic Development Center
- Hmong American Farming Association – Pakou Hang
- Farmers’ Legal Action Group
- Native Nations
- Chefs
- Grocery stores

Noted that this is a business process improvement project. For the part-time positions, it would be good to have someone who has the skills of listening and implementing what was heard.

## **Drying of Food, Especially Mushrooms**

*Brett Olson*

Brett attending the Mushroom Certification course that was offered by U of MN Extension. A question came up about whether it’s allowed to sell dried mushrooms. The answer given at the class was “no.”

MDA staff present disagreed with that answer. Their main concern is that the mushrooms be from an approved source: either purchased at a grocery store, or grown by the farmer, or harvested wild by a person who has taken an approved course for mushroom harvesting.

Water activity ( $a^w$ ) is one of the criteria for determining if a food item is not potentially hazardous. If the  $a^w$  is correct, the MDA does not have a requirement for how the dehydrating happens. It could be solar or mechanical.

Valerie Gamble can supply accurate information about the requirements for mushroom drying and sales. This information should be sent to individuals who took the Extension class.

## **Agritourism**

*Jan Joannides*

The agritourism bill passed in the same omnibus bill as MDA funding and cottage food. This bill limits farmers’ liability for agritourism activities, except in the case of minors or vulnerable people.

Training and education are needed for operators of agritourism activities:

- MDA and MDH did two joint agritourism workshops, which included a food safety component
- Information is needed for operators on placement of food areas vs. livestock areas. There's concern about how to keep people safe with petting zoos or other access to animals, and food at the same event.
- Suggestion to provide information to the consumers at agritourism activities
  - Noted, however, that farmers are more motivated than consumers to take action on food safety because it's their farm on the line.
    - MISA could consider developing a manual as a future Information Exchange project
  - Paul Hugunin and Renewing the Countryside will work on signage for farms to alert consumers to risks
  - It could be useful to have a form that agritourists have to sign. It would not be legally binding as a release from liability, but would raise consumers' awareness of hazards.

## **Resources for food safety training, education**

- MDH has five training modules available for food safety education that can be used at conferences and workshops.
  - Based on the 5 reportable pathogens – “Poo Fighters 2015 Tour”  
<http://www.health.state.mn.us/divs/eh/food/cfm/sprwkshpbroch.pdf>
- Ben Miller has slides showing egregious food safety and food licensing violations.