

HUSCH BLACKWELL

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VIA EMAIL

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Re: Ridglan Farms; Notice of Non-Compliance, Case No. 149309

Dear Mr. Benell,

As you know, I represent Ridglan Farms. The purpose of this letter is a) to memorialize the December 18, 2024, administrative conference between you and other representatives of the Wisconsin Department of Agriculture, Trade and Consumer Protection (“DATCP”) and representatives of Ridglan Farms; and b) to address what we understand to be the next steps to resolve DATCP’s concerns referenced in its November 18, 2024, Initial Notice of Non-Compliance (“Notice”).

Introductory Comments

The conference between DATCP and Ridglan Farms spanned over three hours and included a wide range of detailed factual questions posed by DATCP, such as the number of dogs housed at Ridglan Farms and their relative ages, the size and number of enclosures in each building on-site, the ventilation and air quality of each such building, staffing decisions and responsibilities of staff members, among dozens of other questions. Ridglan Farms provided detailed, factual responses to these questions, along with the history of its operations and, in several instances, matched its explanations to specific buildings on a physical map of Ridglan Farms’ facilities that had been provided by DATCP. My client is confident that its transparency helped DATCP develop

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a better understanding of and appreciation for Ridglan Farms' operations and commitment to regulatory compliance.

As we acknowledged early in the conference, we recognize that the nature of Ridglan Farms' operation—the use of animals for important scientific research, including the development of vaccines—is opposed by certain animal rights groups. Ridglan Farms has been targeted by activists who have threatened to continue their campaign “until every animal is free.”¹ Yet, this small but vocal opposition does not change the fact that Ridglan Farms' activities are entirely lawful. Nor should such opposition affect DATCP's exercise of its regulatory authority. Based on comments made by DATCP representatives during the conference, it appears DATCP agrees. We were encouraged by DATCP's confirmation that the Notice was not tied in any way to the recent media smear campaign or the petition filed by activists in Dane County Circuit Court. DATCP also confirmed that it treats all licensed dog breeders similarly; the scale or size of an operation does not bear on DATCP's decision on whether to bring an enforcement action.

Throughout our conference, Ridglan Farms reinforced that it seeks to fully comply with all applicable regulations, and in many instances, it goes above and beyond quantifiable standards. For example, while acknowledging that Ridglan Farms is exempt from ATCP § 16.22, DATCP referred to its internal policy for measuring ammonia that encourages readings below 15 parts per million (PPM). However, Ridglan Farms' own standards are far more stringent, aiming for less than 5 PPM. In fact, Ridglan Farms would make ventilation adjustments if ammonia levels even approached 10 PPM, let alone 15 PPM. In addition, to ensure up-to-date readings, Ridglan Farms recently increased its ammonia reading frequency from monthly, to biweekly, to now weekly.

Nevertheless, from the outset of the conference, Mr. Boyd made reference to Ridglan Farms' “violations” in June and September of 2024, emphasizing that “accountability” will “go a long way” to resolve this matter through an enforcement action. This initial framing of our discussion was disappointing, as DATCP referred to the conference as a “fact-finding process,” apparently to first learn about Ridglan Farms' operations. Ridglan Farms is confident that it has complied with the provisions cited in the Notice. Therefore, what Ridglan Farms hoped to accomplish at the administrative conference—and still hopes to accomplish—is to receive from DATCP clear, measurable guidance as to what DATCP believes must be done to achieve and remain in compliance. Ridglan Farms cannot demonstrate “accountability” if there is confusion about what the standards are.

¹ See, e.g., DIRECT ACTION EVERYWHERE (accessed Dec. 27, 2024, <https://www.directactioneverywhere.com/#Push> (“Until every animal is free... Direct Action Everywhere is a global network of activities working to achieve revolutionary social and political change for animals in one generation.”)).

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Alleged Violation of ATCP § 16.20(6)(b)

During an early portion of the conference, DATCP focused on ATCP § 16.20(6)(b), which requires all dogs to receive “daily positive human contact and socialization, not limited to feeding time.” *See* ATCP § 16.20(6)(b). Ridglan Farms expected to learn from DATCP what constitutes adequate contact and socialization. Instead, Ridglan Farms was met with the open-ended question: “What does positive human contact mean to you?” When replying, respectfully, that the regulator should inform the regulated community what the relevant standards mean, DATCP was unwilling to do so. Mr. Boyd even acknowledged that § 16.20(6)(b) does not prescribe a particular length of time, but vaguely suggested that DATCP had concerns regarding Ridglan Farms’ staffing levels. While Ridglan Farms strongly believes that its staffing levels and the time devoted to “daily positive human contact and socialization, not limited to feeding time” goes above and beyond compliance with ATCP § 16.20(6)(b), we were troubled by the fact that DATCP was unable to articulate any basis for a contrary opinion.

Alleged Violation of ATCP §§ 16.20(2)(b) and (2)(e)

Relatedly, the conference included a discussion of Ridglan Farms’ daily body checks on dogs, in reference to ATCP §§ 16.20(2)(b) and (2)(e). ATCP § 16.20(2)(b) requires that a responsible caretaker on the premises “shall perform daily body, mobility, and behavior checks on each dog,” while ATCP § 16.20(2)(e) requires that a “licensed veterinarian shall examine each dog as often as necessary to ensure adequate health care.” In what appears to be the sole evidence for alleged violations of these two provisions, DATCP pointed to three dogs (out of more than 3,000 at Ridglan Farms’ facility) that were mentioned in its June and September 2024 inspection reports. These dogs were observed during DATCP inspections to have injuries not from “that day.” Ridglan Farms noted that it is likely the dog simply wasn’t seen yet that day by Ridglan Farms staff. Ridglan Farms also noted that as a practical matter, an injury like the observed interdigital cyst could have been present the day prior but hadn’t yet manifested itself as a visible impairment—whether to DATCP inspectors, a Ridglan Farms veterinarian, or any other observer. DATCP acknowledged that “we could debate and never reach an answer” on how long an injury was present. Yet, in justifying the inclusion of these issues in the Notice, Mr. Boyd pointed generally to the combination of these three observed injuries and the “math” regarding Ridglan Farms’ staffing.

To be clear, during the discussion of daily positive contact and daily body, mobility and behavior checks, at no time did DATCP indicate the number of staff members and/or amount of time required to achieve compliance with ATCP §§ 16.20(2)(b), (2)(e) or (6)(b). Instead, DATCP repeatedly stated that Ridglan Farms must have “enough” employees to comply. Ridglan Farms

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explained its firm belief that its current staffing (recently increased from 16 staff members to 19) *is* enough. For example, with approximately 3,000 dogs and 19 employees, all of whom devote part of each day to socialization, a full minute of contact per dog only requires 158 minutes (or approximately 2.5 hours) of a full-time employee's workday. Particularly with at least one employee devoted *full-time* to socialization, this average duration of time is even less for the remaining employees. We would welcome additional discussion on this point to resolve DATCP's staffing-related concerns.

Alleged Violation of ATCP § 16.20(3)(c)(4)

The final portion of our conference focused on Ridgland Farms' waste disposal and ventilation practices in relation to ATCP § 16.20(3)(c)(4), which requires dogs to be "kept in *enclosures* that comply with 9 CFR, Chapter I, subchapter A" (emphasis added; hereinafter "the AWA"). We expressed concerns, as a matter of statutory construction, about the scope of the AWA's incorporation into ATCP § 16.20(3)(c)(4). As we noted, the operative term in the State regulation is "enclosures," while the referenced portion of the AWA applies broadly to "housing facilities" and separately refers to "enclosures." As I explained in the conference, the well-established rule of statutory construction, which applies with equal force to administrative regulations,² holds that if a statute or regulation uses separate terms, those terms have separate meanings.³ It therefore appears as a legal matter that most of the AWA requirements (those that relate to matters beyond *enclosures*) are generally *not* incorporated into ATCP § 16.20(3)(c)(4). In response to that legal argument, Mr. Boyd stated that he understood this position, but that is not how DATCP interprets the rule. He added, "We know what the intent was of the rule," but neither he nor DATCP legal counsel Mr. Riviera offered any explanation or support for a more expansive interpretation. We would welcome such an explanation for how the reference to "enclosures" incorporates the entirety of AWA's rules for "housing facilities."

Whether as part of our discussion of the AWA, or the subjective/ambiguous requirements like "as often as necessary" or "adequate health care," *see* ATCP §§ 16.20(2)(b) and (2)(e), we emphasized multiple times that Ridgland Farms seeks clarity on how to ensure compliance with each regulation cited in the Notice. This is not an unreasonable request. As a general matter, an

² "Interpretations of code provisions, and the determination as to whether the provision in question is consistent with the applicable statute, are subject to principles of statutory construction." *Orion Flight Servs., Inc. v. Basler Flight Serv.*, 2006 WI 51, ¶ 18, 290 Wis.2d 421, 714 N.W.2d 130 (citing Wis. Stat. § 227.27(1)).

³ *See, e.g., Sojenhomer LLC v. Vill. of Egg Harbor*, 2024 WI 25, ¶ 18, 412 Wis.2d 244, 7 N.W.3d 455 (citing *Augsburger v. Homestead Mut. Ins. Co.*, 2014 WI 133, ¶ 17, 359 Wis. 2d 385, 856 N.W.2d 874 (explaining that when statutes use different terms, "we generally consider each [term] separately and presume that different words have different meanings"))).

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administrative agency with the power to enforce administrative regulations ought to provide reasonable notice to the regulated community regarding how the agency interprets and intends to enforce those regulations. We left the conference disappointed that DATCP is unwilling or unable to share that information. Ironically, the only objective requirement discussed was the ammonia policy from which Ridgland Farms is exempt, but nevertheless far exceeds. *See supra* at 2. We were encouraged by Mr. Boyd stating that DATCP “can look” and see what guidance documentation might “exist,” although this also suggests that such guidance was not used by DATCP in issuing its Notice to Ridgland Farms in the first place.

Lack of Guidance on DATCP Interpretation and Compliance

Relatedly, I found it particularly troubling that near the end of the conference, in response to our repeated request for direction on how to comply, Mr. Boyd stated that DATCP’s response to “anyone” who asks is “here are our rules and regulations,” and telling the entity to consult with an attorney because DATCP cannot give “legal advice.” In other words, despite the fact that DATCP has legal authority to declare a regulated entity in violation of the rules, and to authorize an enforcement action on the basis of such alleged violation, DATCP’s position appears to be that providing a regulated entity with DATCP’s interpretation and enforcement parameters regarding its own regulations—namely, what is required for compliance—amounts to the provision of legal advice. By that logic, in the absence of objective measurable standards, Ridgland Farms (or any other regulated entity) must simply guess at what DATCP deems sufficient for compliance. Fundamental issues of due process demand far more.

Stunned by DATCP’s stated logic and the bind in which it leaves the entire regulated community, I cautioned that to the extent this matter is not resolved amicably (our preferred outcome), DATCP would necessarily be required to show in an administrative and/or court proceeding precisely what the highly ambiguous rules in the Notice require for compliance and how Ridgland Farms allegedly failed to comply. We believe it would serve both parties’ interests to know that now, rather than as part of time-consuming and costly litigation.

Conclusion and Next Steps

As for next steps, we would appreciate receiving a copy of the map of the Ridgland Farms facility used during the conference, as well as any guidance documents currently used by DATCP in relation to the regulations at issue in the Notice. We also look forward to continuing a productive dialogue geared towards addressing DATCP’s concerns and providing guidance to Ridgland Farms regarding compliance. To repeat our position stated during the conference, Ridgland Farms is committed to regulatory compliance and Ridgland Farms believes it is in compliance. If there are changes DATCP believes are needed—changes that are tied to particular standards contained in

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the code—we would be grateful to know what those changes are, and we are hopeful that this matter can be resolved without resorting to litigation.

Very truly yours,

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