

MEMO

To: File
From: Mark Truesdell
Date: 11/13/2013

Re: Raw Milk: Significant Recent Developments

Feb. 2012: FDA won a permanent injunction against a Pennsylvania raw milk farmer selling raw milk across state lines. U.S. v. Allgyer, Feb. 2012 (E.D. Pa. Civil Action No. 11-02651) Mr. Allgyer was a dairy farmer in Kinzers, Pennsylvania farming as Rainbow Acres Farm. From 2009 through 2011, Mr. Allgyer was selling Rainbow Acres' raw milk online through a *Yahoo!* group named "grassfedonthehill." Buyers were required to join grassfedonthehill to purchase products from defendant. The grassfedonthehill website describes grassfedonthehill as a "group . . . created to support and organize the delivery of grass fed (no antibiotics or hormones) Raw Dairy and Meat to the Greater Washington, DC area." The website also listed delivery locations in Maryland and the greater D.C. area, and warned members to "not share information" about the group with government agencies or doctors. The website identified Mr. Allgyer as grassfedonthehill's farmer. Customers must sign agreements to join the Communities Alliance for Responsible Eco-farming ("CARE") group "in order to protect [the] farm . . . from the ongoing harassment" by the Pennsylvania Department of Agriculture.⁷

Rainbow Acres Farm sold its raw milk online through that organization for \$6 per gallon and \$3.25 per half-gallon. Mr. Allgyer stated that he is not the owner or in control of the CARE organization. But Mr. Allgyer signed the CARE Membership Agreement, , as well as the CARE Membership Contract, , which provide that Mr. Allgyer will enter into a cow share or lease agreement. Following the purchasing and pick-up instructions on the Rainbow Acres Farm website, the FDA purchased and paid for 23 gallon and half-gallon containers of raw milk, which were tested at an independent laboratory and confirmed to be unpasteurized.⁸

After securing a warrant, the FDA inspected Rainbow Acres Farm and collected evidence that Mr. Allgyer was engaged in milking cows and packaging the unpasteurized milk in unlabeled containers for delivery out of state. After receiving the warning letter, Mr. Allgyer posted on the Farm's website stating that the government was trying to "shut [him] down," but that he was going to continue selling raw milk by "leasing" his cows through the "Rawsome Club," which required a \$25.00 membership fee and was called "The Right to Choose Healthy Food's Rawsome Club". (Mr. Allgyer states that he does not own or have any control over this organization.) On May 6, 2010, grassfedonthehill emailed its members a message stating that, with the change over to the Rawsome Club, Mr. Allgyer was making deliveries on Monday and Thursday. On September 28, 2011, FDA investigators accessed the Rainbow Acres Farm website and found that Mr. Allgyer continues to offer unpasteurized milk for direct human consumption to out-of-state

consumers under the name “Rainbow Valley Farms.” The FDA sought a permanent injunction against Mr. Allgyer’s continued violation of the Food, Drug and Cosmetic Act and its rule against interstate transportation of raw milk. The District Court granted the injunction.

Jan. 15, 2013: The American Farm Bureau at its 94th Annual Meeting on Jan. 15, 2013, approved new policy in support of only pasteurized milk and milk products being sold or distributed for human consumption.

2012 and 2013: Minnesota v. Alvin Schlangen (two different actions): Alvin Schlangen is a poultry farmer who has in the past purchased raw milk from dairy farms and sell it, along with other products, in the Twin Cities metro area through drops sites and over the internet. Under Minn. state law, raw milk can only be sold on the farm where it's produced.

June 2010: Finding that he was selling raw milk and other food products to retail coops and at Farmers Markets requiring a license, the Minn. Dept. of Ag. embargoed all his products including raw milk and shut down an illegal buying club in Mpls. Minn. Dept. of Ag issued orders to Mr. Schlangen to stop selling w/o a license food products not produced on his farm.

Dec. 2010: An inspector found that Mr. Schlangen had cut the embargo tape on embargoed food products and sold them. Mr. Schlangen claimed that he was a buying club and was leasing cows from a dairy farm; alleged that the online sales constituted a private cooperative, and that no sales had taken place.

Sept. 2012: Criminal case in Hennepin County: Mr. Schlangen charged with selling raw milk, operating without a food license, and handling adulterated or misbranded food. Schlangen demanded jury. His attorney argued that his client was not involved in a business venture, but a private food club. Called the Freedom Farms Co-op, the club had 130 members who could pick from various farm products signed up. Schlangen was depicted as doing nothing more than being a volunteer who picked up raw milk from an Amish dairy and was delivering it—along with other products including his organic eggs—to club members in the Twin Cities area. The prosecution tried to convince the jury that food safety laws exist to protect the public health. This Minnesota jury, however, was not buying that argument. Jury found for Mr. Schlangen.

March 2013: Admin. Law Judge found against Mr. Schlangena and for the Minn. Dept. of Ag. on every violation alleged¹: [

¹ 26. Respondent has operated and continues to be engaged in the business of food handling without a food handlers license in violation of Minnesota law. Minn. Stat. § 28A.04.

27. Respondent has sold and continues to sell unpasteurized milk and cream in violation of Minn. Stat. § 32.393 (2010).

28. Respondent has sold and continues to sell unpasteurized milk in final package form in violation of 21 C.F.R. § 131.110 and the Minnesota Food Code (Minn. R. ch. 4626).

29. Respondent has manufactured, sold, delivered, held, and offered for sale food that is misbranded in violation of Minnesota law. Minn. Stat. §§ 31.02(a); 32.123(a), (c), (e), (f), (g), and (h); 31A.02, subs. 14(f), (l) (2010).

30. Respondent has sold uninspected, custom slaughtered meat in violation of Minnesota law. Minn. Stat. § 31A.10(2), (4) (2010).

31. Respondent has removed embargoed product in violation of Minn. Stat. § 31.05 (2010). 32. Respondent has sold at retail, offered for sale at retail, and possessed eggs in violation of Minn. Stat. § 29.26 (2010).

33. Respondent has operated a dairy plant without a dairy plant permit in violation of Minnesota law. Minn. Stat. § 32.392 (2010).

34. Respondent operated a food establishment or other place where food products were manufactured, packed, stored, deposited, collected, prepared, or produced in an insanitary condition in violation of the Minnesota Food Law. Minn. Stat. § 31.161 (2010).

35. Respondent has sold, delivered, held or offered for sale food that is adulterated, including but not limited to bottled, unpasteurized milk, maple syrup and oranges, in violation of Minn. Stat. § 31.02 (a) (2010).

37. The online grocery store is a “food establishment” subject to regulation by the Department as is the delivery van

Aug. 2013: Criminal case in Stearns County: Jury found against Mr. Schlangen on charges of operating without a food handler's license, storing eggs at unsafe temperatures, violating a food embargo, distributing adulterated and/or misbranded food and selling custom-processed meat. A raw milk-specific charge was dismissed before trial. The judge gave Schlangen a suspended 90-day jail sentence and a \$1,000 fine with \$700 suspended.

2012/2013: Amended Wyoming Rule permits cow-shares for raw milk: When the Dept. of Agriculture proposed a rule to tighten raw milk regulations, the Governor ordered it to loosen the rule to permit cow-share herds. The Dept. originally wrote the rule to read:

(i) This subsection does not apply to individuals who obtain milk from animals *solely* owned by them, members of their family, or their employer and who furnish raw milk or products made from raw milk only to members of their family or nonpaying guests. (emph. added).

In four hearings around the state, objections to the word "solely" were loud and many. The word was removed.

Feb. 2013: S.F. 112 died in Committee, Wyoming State Senate. But Interim Committee studies. S.F. 112 would have allowed raw milk by farms of no more than three cows or eight sheep or seven goats with a state permit. The milk would have had to meet all safety regulations others than those for pasteurization. Sales to restaurants barred; if sold away from the farm milk must include a state-approved label. Failed to pass committee before the "funnel" deadline.

However, Legislative leaders have asked their Joint Agriculture Interim Committee to spend the remainder of the year exploring options for retail sales of unpasteurized dairy products. The interimcommittee plans to examine how neighboring states regulate raw milk. If legislators conclude another state's laws might work in Wyoming, they could draft a bill for the 2014 session.

May, 2013: The Vernon Hershberger verdict in Wisconsin. From the May 26, 2013 Food Safety News: "A Sauk County, Wisconsin jury, meeting until 1 a.m. Saturday, acquitted Vernon Hershberger on three charges: operating a farm store without a retail food establishment permit, operating a dairy farm without a milk producer license, and operating a dairy plant without a license. But it found him guilty on a fourth count. Attorney Elizabeth Rich, vice president for the Farm-to-Consumer Legal Defense Fund, said Hershberger's acquittal on three of four counts is a "victory for the food right movement." His supporters said farmer of Amish roots faced charges stemming only from his leasing cows to a private buyers club and providing raw dairy and other nutrient-dense foods to the club members. Prosecutors said the evidence clearly showed Hershberger's club was a retail store, complete with product price list, a cash register, and a credit card machine. The week-long trial brought food freedom activists to the Wisconsin town of Baraboo where the court is located. Wisconsin law prohibits the commercial sale of raw milk and raw milk products.

June 2013: Vernon Hershberger was sentenced for violating a hold order placed on products in his food store, which he said was a private buyers club. Hershberger had engaged in an act of civil disobedience in June 2010 when he cut seals that state Department of Agriculture, Trade

and Consumer Protection officials placed on coolers and shelves to keep him from distributing food products, including raw milk, to members of the farm's private buying club. He posted an Internet video of himself titled "breaking the seals," which showed him opening chest freezers in the store that had been locked down by the hold order.

Sauk County Circuit Judge Guy Reynolds ordered Hershberger to pay a \$1,000 fine, plus \$513 in court costs, for the hold-order violation. 6/10/2013 Milwaukee-Wisconsin Journal Sentinel.

June 6, 2013: Governor Sandoval of Nevada Vetoes Assembly Bill 209. Nevada law empowers local milk commissions to certify raw milk for sale solely within their county. Nye County has a milk commission that approves raw milk produced in the Amargosa Valley, but it needed AB209 to legally enter the Las Vegas market. AB209 of the 2013 legislative session had been passed unanimously by the Nevada House and encountered only four negative votes in the Senate. In his veto letter, Governor Sandoval cited the Centers for Disease Control and Prevention, the Food and Drug Administration, the American Medical Association, and the Nevada State Health Officer.

July 8, 2013 : Maine Governor Vetoes Raw Milk Bill LD 1282. LD 1282 would have exempted small farmers' raw milk from licensing and inspection. LD 1282 had been entitled "An Act To Help Small Farmers in Selling Raw Milk Products." . Currently Maine law requires raw milk producers in Maine to have their farms licensed and inspected. LD 1282 would have exempted small dairy producers who produce less than 20 gallons of raw milk daily. Governor Paul LePage, who had been involved in trying to work out an issue involving the sale of raw milk at farmers' markets, vetoed the bill. Upon return to the Maine Senate on July 9, the Senate voted not to overturn the Governor's veto of the bill. The Governor's veto message indicated that he would support a version of the bill limited to on-farm sales only.

Wisconsin Raw Milk Bill: Assembly Bill 287; Senate Bill 236. To legalize on-farm sales of raw milk.

SB 236 Intro. 7/31/2013; referred to Senate Committee. Public hearing 9/11/13; public hearing 9/16/2013.

AB 287 Intro. 8/13/2013; referred to Assembly Committee on Agriculture.

SB 236 Amended and passed 3-2, Senate Committee. As amended, raw milk sales would be allowed on the farm only. Raw-milk products, including buttermilk, kefir, yogurt, whey, ice cream, butter and cheese, could also be sold on the farm. Raw-milk dairies would register with the Wisconsin Department of Agriculture, Trade and Consumer Protection. Raw milk sold directly to consumers would have to be in clean and properly labeled containers. The dairy would have to comply with at least some Grade A milk standards. The new license category for raw milk would be referred to as "Grade 1 unpasteurized." Only raw milk free of pathogens including Campylobacter, Salmonella, Listeria monocytogenes and E. coli, could be sold for human consumption.

Grade 1 raw milk dairies would be inspected only once every two years. Raw milk dairies would be required to submit samples for testing to labs approved by the State of Wisconsin or another state, or the U.S. Food and Drug Administration.

The Wisconsin Legislature is currently in the last “floor period” of 2013, which ends tomorrow, but the committee-adopted raw-milk bill will be eligible for floor action early next year with the first floor period of 2014 scheduled for Jan. 14-23. The current 2013-14 Wisconsin Legislature is not scheduled to adjourn until next June.²

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² Nov. 13, 2013 [Food Safety News](#)